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IN THE

Supreme Court of the United States

OCTOBER TERM, 1940.

No. 21

BACARDI CORPORATION OF AMERICA, *Petitioner,*

v.

RAFAEL SANCHO BONET, TREASURER, *Respondent,*

and

DESTILERIA SERRALLES, INC., *Intervenor-Respondent.*

BRIEF FOR PETITIONER.

THE OPINIONS BELOW.

The first opinion in this case was by the United States District Court for the District of Puerto Rico. It is not officially reported but will be found at R. 95-116. The opinion of the Circuit Court of Appeals for the First Circuit is reported in 109 F. (2d) 57. (R. 429-443.) This court granted certiorari on April 22, 1940, 309 U. S. 652.

JURISDICTION.

The case originated in the District Court for Puerto Rico upon a bill for an injunction brought by petitioner to restrain the Treasurer of Puerto Rico, in his official capacity, from enforcing against petitioner certain provisions of several laws passed by the Puerto Rican legislature. The laws thus attacked deprive petitioner, and petitioner alone among producers of rum in Puerto Rico, of the right to use valid trade-marks and trade names (of Cuban origin) and its corporate name, in its business of manufacturing rum in Puerto Rico and marketing the rum in continental United States and elsewhere. Petitioner is also denied the right to ship rum out of Puerto Rico in containers larger than one gallon, a limitation which, in its practical effect, prohibits bulk shipments for rebottling or sale in the United States and deprives petitioner of a large and profitable business.

The District Court granted an injunction. The Circuit Court of Appeals reversed. The case is here on writ of certiorari, granted April 22, 1940.

On May 18, 1940, Rafael Sancho Bonet, one of the respondents in this case, ceased to be treasurer of Puerto Rico. His successor, the present treasurer of Puerto Rico, is Manuel V. Domenech. A motion to substitute has been filed, together with a stipulation signed by counsel for all parties, agreeing that Domenech may be substituted for Bonet as a respondent in the case. This motion will be presented to the Court when it reconvenes on October 7, 1940.

The jurisdiction of this Court is invoked on the ground that the prohibitions contained in the Puerto Rican laws are invalid as applied to petitioner, because

1. They are in conflict with a treaty between the United States and other foreign nations, known as the Inter-American Convention and Protocol for Trade-Mark and Commercial Protection;

2. They are in conflict with a statute of the United States, the Federal Alcohol Administration Act, and Regulations adopted pursuant to it;

3. They deprive petitioner of due process of law and the equal protection of the laws in a manner forbidden by the Organic Act of Puerto Rico and by the Fifth and Fourteenth Amendments to the Constitution of the United States; and

4. They are in violation of the Commerce Clause of the Constitution of the United States because they constitute an unreasonable restraint on the commerce therein described.

STATEMENT.

Petitioner is a Pennsylvania corporation. By appropriate instruments executed in 1934 and 1935, it received exclusive regional rights to manufacture, sell and distribute Bacardi rum in the United States and certain of its possessions, including Puerto Rico. It likewise received exclusive regional rights to the disclosure and use of the secret processes for making Bacardi rum, together with the territorial right to use on this rum the Bacardi name and trade-marks. The grantor of these rights was Compania Ron Bacardi, S. A., a Cuban corporation, the successor of a family business founded under the Bacardi name in 1862 at Santiago de Cuba. From the beginning certain distinctive labels and devices, as well as the family name of Bacardi, were employed to distinguish this rum, which

has had wide acceptance and has acquired a valuable good will. (Contracts between petitioner and Cuban Bacardi, R. 290-303, 303-305.)

The Cuban Bacardi rum has been sold in the United States and Puerto Rico for many years. The trademarks applied to it were registered in the United States Patent Office and in Puerto Rico. They included the names "Bacardi" and "Bacardi y Cia", the representation of a bat in a circular frame and certain distinctive labels. Petitioner's right to use these trade-marks in the United States and Puerto Rico was on condition that all rum produced by petitioner would be made in accordance with the secret formula and process disclosed to petitioner by Cuban Bacardi and under the supervision of Cuban Bacardi so that the product should be identical with the Bacardi rum made in Cuba. The District Court found that the rum manufactured by petitioner in Puerto Rico was made under such formula and supervision and was the same as that previously produced and marketed by Cuban Bacardi. (Findings 7, 12; R. 110, 111.)

Early in 1936, petitioner decided to locate its plant in Puerto Rico. On February 22, 1936, petitioner's Vice-President arrived in Puerto Rico to arrange for the establishment of its business there, and, on March 31, 1936, it qualified to do business in Puerto Rico as a foreign corporation. (R. 140-141, 284-285.) It leased a plant and made an immediate expenditure of some $45,000 for equipment. At the time of this suit, petitioner's total investment in Puerto Rico was $600,000. (R. 111-112.) It holds rectifiers and distillers permits issued by Puerto Rico (R. 288, 315, 316) and basic permits from the Federal Alcohol Administration. (R. 112, 271-273.) It also holds a certificate issued by the

Federal Alcohol Administration, which approves the use of the following label employed on the rum manufactured by it in Puerto Rico. (R. 269, 275-77.)

After petitioner had duly qualified to do business in Puerto Rico and while petitioner was expending money equipping its plant there, but before any rum was actually produced, the territorial legislature passed Act No. 115, the Alcoholic Beverages Law of May 15, 1936, described as experimental legislation and by its terms to be in effect for one year only. This was a statute of some length but only certain clauses of Section 41 are important here. They provide that

> "If any kind, type, or brand of distilled spirits of a foreign origin becomes nationally or internationally known by reason of its bearing or showing as its brand, trade name, or trade-mark, the proper name of the manufacturer thereof, such name shall not, in any manner or form whatever, appear on the labels for any distilled spirit of said kind or type manufactured, distilled, rectified, or bottled in Puerto Rico."
>
> "No holder of a permit under this title shall manufacture, distill, rectify, or bottle, either for himself or for others, any distilled spirit locally or nationally known under a brand, trade name, or trade-mark previously used on similar products manufactured in a foreign country, or in any other place outside Puerto Rico; Provided, (1) *That such limitation, aimed at protecting the industry already existing in Puerto Rico, shall not apply to any brand, trade name, or trade-mark used by a manufacturer, rectifier, distiller, or bottler of distilled spirits, manufactured in Puerto Rico on February 1, 1936;* and (2) such restrictions shall not apply to any new brand, trade name, or trade-mark which may in the future be used in Puerto Rico". (Italics supplied)

This was new legislation of a type not theretofore existing. When petitioner qualified in Puerto Rico and began its expenditures there was no legislation interfer-

ing with its business. Respondents in this case do not deny that the new legislation was aimed at petitioner alone or that its purpose was to prohibit all competition by petitioner with already existing producers of rum in Puerto Rico. Petitioner's trade-marks were the only ones affected by the prohibitions above quoted, although there were and are other foreign trade-marks being used on rum distilled in Puerto Rico. (R. 114.) These were exempted from the operation of the act because used locally on February 1, 1936.

The Act of May 15, 1936 was repealed by Act No. 6, the Spirits and Alcoholic Beverages Act of June 30, 1936, which because it was passed at a special session did not become effective until September 28, 1936. It was of limited duration expiring, by its terms, on September 30, 1937. The new act contained the trade-mark limitations of the old and added a provision prohibiting exports in bulk, as follows:

> "Section 44. No holder of a permit granted in accordance with the provisions of this Act shall distill, rectify, manufacture, bottle or can, any distilled spirit, rectified spirit, or alcoholic beverage formerly known under a trade-mark or commercial name, because such trade-mark or commercial name has been used on similar products manufactured in Puerto Rico or outside of the Island: Provided, That this limitation shall not apply to any trade mark or commercial name, used for products manufactured in Puerto Rico prior to the approval of this Act; and Provided, further, *That distilled spirits,* with the exception of ethylic alcohol, 180° proof or more, industrial alcohol, alcohol denatured according to authorized formulas, and denatured rum for industrial purposes, *may be exported from Puerto Rico only in containers holding not more than one gallon,* and each container shall bear the corresponding label contain-

ing the information prescribed by law and the regulations of the Treasurer." (Italics supplied)

On May 15, 1937, the Puerto Rican legislature, by Act No. 149, amended the Act of June 30, 1936 in several particulars. The expiration date was eliminated and the legislation became permanent in character. It added a declaration of policy in connection with the prohibition of the use of certain foreign trade-marks, which reads:

> "Section 1 (b). Declaration of Policy. It has been and is the intention and the policy of this Legislature to protect the renascent liquor industry of Puerto Rico from all competition by foreign capital so as to avoid the increase and growth of financial absenteeism and to favor said domestic industry so that it may receive adequate protection against any unfair competition in the Puerto Rican market, the continental American market, and in any other possible purchasing market."

The old section 44 of June 30, 1936 was made more drastic by amending it to read:

> "Section 44. No holder of a permit granted in accordance with the provisions of this or of any other Act shall distill, rectify, manufacture, bottle, or can any distilled spirits, rectified spirits, or alcoholic beverages on which there appears, whether on the container, label, stopper, or elsewhere, any trade-mark, brand, trade name, commercial name, corporation name, or any other designation, if said trade-mark, brand, trade name, commercial name, corporation name, or any other designation, design, or drawing has been used previously, in whole or in part, directly or indirectly, or in any other manner, anywhere outside of the Island of Puerto Rico; Provided, That this limitation shall not apply to the designations used by a distiller, recti-

fier, manufacturer, bottler, or canner of distilled spirits manufactured in Puerto Rico on or before February 1, 1936."

The prohibition against exportation of rum in containers larger than one gallon was retained in a new Section 44 (b), reading as follows:

> "Section 44 (b) Distilled spirits, with the exception of ethylic alcohol, 180° proof or more, industrial alcohol, alcohol denatured according to authorized formulas, and denatured rum for industrial purposes, may be shipped or exported from Puerto Rico to foreign countries, to the continental United States, or to any of its territories or possessions, or imported into Puerto Rico, only in containers holding not more than one gallon, and each container shall bear the corresponding label containing the information prescribed by law and by the regulations of the treasurer; * * *"

Section 7 of the Act of May 15, 1937, next quoted, was apparently adopted to extend the legislative clemency to a single distiller established in Puerto Rico after February 1, 1936 who desired to use in Puerto Rico a trade-mark which had previously been extensively used, and was well known outside Puerto Rico but only in the continental United States. (R. 172) That section provides:

> "Section 7. In regard to trade-marks only, the provisions of the Proviso of Section 44 of Act No. 6, approved June 30, 1936, and which is hereby amended, shall be applicable to such trade-marks as shall have been used exclusively in the continental United States by any distiller, rectifier, manufacturer, bottler, or canner of distilled spirits, prior to February 1, 1936, provided such trade-marks have not been used, in whole or in part, by a distiller, rectifier, manufacturer, bottler, or canner of

distilled spirits outside of the continental United States, at any time prior to said date."

Without Section 7 there were two distillers caught in the legislative mesh. Now, there was only the petitioner. Since petitioner's trade-marks had been extensively used elsewhere as well as in the United States, it was afforded no relief by this Section 7. Since these same marks were not used on rum manufactured in Puerto Rico prior to February 1, 1936, their use after that date was prohibited by Section 44, as amended in 1937. The declaration of policy in Section 1 (b) of the 1937 Act, although an afterthought, shows the intent of the legislature to confine both the domestic sale of rum and its shipment out of Puerto Rico by manufacturers or bottlers established in the Island after February 1, 1936, to brands which had not theretofore gained the international public acceptance won by Bacardi. The target aimed at was petitioner alone. The Bacardi trade-marks are the only ones affected. Indeed it was the intent of the legislature to prohibit their use.

After the passage of the Act of May 15, 1937, (on July 31, 1937) petitioner filed a bill for an injunction in the District Court against the Treasurer of Puerto Rico, the official charged with the administration of the act. The bill sought to restrain him, in his official capacity, from enforcing its provisions dealing with trade-marks and bulk shipments. Two Puerto Rican distillers sought and were permitted to intervene on the side of the Treasurer. After testimony was taken and argument heard, the District Judge made findings of fact and issued an injunction, as prayed. (R. 116-117) The case was reversed solely as a matter of law on appeal by defendant and one intervenor.

There has been no real controversy over the facts. For that reason and because they are clearly and succinctly expressed. the findings of the trial court are set forth here, as follows: (R. 107-114)

"FINDINGS OF FACT."

"1. Since April 24, 1934, plaintiff, Bacardi Corporation of America, has been and still is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania. It is authorized by its charter to manufacture, produce, distill and redistill, develop, rectify, blend, mix, purify, recover, flavor and denaturize alcohol or alcoholic liquors for beverage purposes."

"2. Plaintiff, Bacardi Corporation of America, was registered to do business in Puerto Rico on March 31, 1936, under the laws of Puerto Rico relative to foreign corporations, and on April 6, 1936 received from the Treasurer of Puerto Rico a license to do business in Puerto Rico as a foreign corporation."

"3. Defendant, Rafael Sancho Bonet, is the Treasurer of Puerto Rico, a citizen of the United States of America and Puerto Rico and a resident and domiciled in Puerto Rico and is charged under the laws of Puerto Rico with the duty, among others, of administering the Alcoholic Beverage Laws of Puerto Rico."

"4. This is a case of a civil nature between a citizen of the State of Pennsylvania and a citizen of the State of Puerto Rico wherein the amount in controversy exceeds, exclusive of interest and costs, the sum or value of $3,000."

"5. Plaintiff attacks Sections 40, 44 (b) and 97 (b) of Act. No. 6 of the Puerto Rican Legislature, as amended by Act No. 149, and also Section 7 of

said Act No. 149. The pertinent provisions of these sections read as follows:"[1]

"6. Continuously since 1862 Compania Ron Bacardi, S. A., a corporation organized under the laws of the Republic of Cuba, and its predecessors have been, and Compania Ron Bacardi, S. A., now is, engaged in the business of producing and selling alcoholic liquors, principally rum, throughout the world."

"7. For more than twenty years, except for the period during national prohibition, Compania Ron Bacardi, S. A. and its predecessors have sold alcoholic liquors, principally rum, in Puerto Rico and elsewhere throughout the United States under trade-marks including the word "Bacardi", "Bacardi y Cia", the representation of a bat in a circular frame, and certain distinctive labels. These trade-marks were duly registered in the United States Patent Office and in the Office of the Executive Secretary of Puerto Rico prior to the passage of the laws complained of in this suit."

"8. During the years 1933 to 1937, inclusive, Compania Ron Bacardi, S. A. has sold in the United States more than three hundred seventy-five thousand (375,000) cases of rum bearing the registered trade-marks and labels set forth in 7 above and has spent over three hundred thousand dollars ($300,000) in advertising to the public Bacardi rum bearing said trade-marks."

"9. On June 8, 1934, and during the period since then the registered trade-marks and labels set forth in 7 above were and still are of great value to the plaintiff."

"10. On June 8, 1934, plaintiff, Bacardi Corporation of America entered into a written agree-

[1] The findings of the District Court quote from Sections 40, 44, 44(b), 97(b) and 7. As the significant portions of the statute are set out on pages 8, 9 and 10 of this brief, they are omitted here.

ment with Compania Ron Bacardi, S. A., by the terms of which the Cuban company authorized the plaintiff to manufacture and sell rum in certain localities and to use the trade-marks and labels (commonly known as the Bacardi trade-marks and labels) belonging to the Cuban company and set forth in 7 above in connection with such manufacture and sale. On December 19, 1935, Bacardi Corporation of America entered into a supplementary agreement with Compania Ron Bacardi, S. A. extending the territory covered by the contract of June 8, 1934 to include Puerto Rico. The contract of June 8, 1934 provides that all rum manufactured and offered for sale by the plaintiff, Bacardi Corporation of America, to which the said trade-marks and labels are attached, is to be manufactured under the supervision of Compania Ron Bacardi, S. A., and is to be the same rum that the Cuban company manufactures and sells under the said trade-marks and labels."

"11. That the contract between the Cuban company and the plaintiff company was formally ratified by the two companies, but even before the formal ratification, the use of the labels and trademarks by the plaintiff was assented to by the Cuban company which actually participated in the use of said labels by plaintiff."

"12. Bacardi rum is and always has been made according to definite processes and methods. It has been extensively advertised and it enjoys an excellent reputation. In accordance with the contract of June 8, 1934, the secret processes and methods under which Bacardi rum is made have been made available to the plaintiff. Plaintiff, in order to comply with the contract of June 8, 1934 by producing rum in Puerto Rico of the identical quality of that produced in Cuba by Compania Ron Bacardi, S. A. has used the secret processes and methods of Cuban Bacardi and brought to

Puerto Rico from Cuba experts and technicians who have supervised the manufacture of rum for the plaintiff in Puerto Rico. The rum so manufactured in Puerto Rico by the plaintiff is made according to the secret methods and processes made available to plaintiff under the aforesaid contract and is the same product heretofore sold in the United States and Puerto Rico under the trademarks set forth in paragraph 7 of these findings."

"13. In March, 1936, plaintiff made arrangements for the installation in Puerto Rico of a plant for the conduct of its business. It leased a building at a yearly rental of ninety-six hundred dollars ($9,600) and expended about forty-five thousand dollars ($45,000) for the installation of its plant. Up to the present time plaintiff's total investment in the said plant and manufactured product exceeds the sum of six hundred thousand dollars ($600,000)."

"14. The right to use the Bacardi trade-marks and labels conferred to plaintiff under the contract of June 8, 1934 is a valuable property right. These trade-marks and labels symbolize a valuable good will and are of great value to the plaintiff in marketing its commodity."

"15. Plaintiff has basic permits from the Federal Alcohol Administration to warehouse, rectify and bottle alcoholic beverages in Pennsylvania, which permits were amended on March 8, 1936 so as to authorize plaintiff to operate its business in Puerto Rico. Plaintiff also obtained from the Federal Alcohol Administrator basic permits to distill in Puerto Rico. On July 20, 1936 plaintiff obtained permits for the same purpose from the Treasurer of Puerto Rico."

"16. On May 18, 1937, September 1 and September 3, 1937, the Federal Alcohol Administrator authorized plaintiff to use on rum manufactured

in Puerto Rico certain labels in conformity with the Federal regulations on the subject and containing the registered trademarks which plaintiff, by virtue of the contract of June 8, 1934, has a right to use."

"17. A specimen of the label which plaintiff uses and proposes to use on rum manufactured and to be manufactured in Puerto Rico is as follows." (shown on page 5 of this brief)

"18. Plaintiff has in stock in Puerto Rico about three hundred fifty thousand (350,000) gallons of rum and is ready to bottle and ship that rum to the United States in quantities of approximately ten thousand (10,000) cases per month."

"19. Plaintiff has or doubtless will have offers for the shipment of rum in bulk from Puerto Rico to the United States and is desirous of making such shipments."

"20. Plaintiff appears to be the only company unfavorably affected by the provisions of the several acts as to the use of labels or trade-marks, although there are at least three other companies now operating in Puerto Rico who use on their products trade-marks and labels which were previously, in whole or in part, used outside the Island of Puerto Rico."

"21. If plaintiff is prohibited from using the trade-marks and labels herein referred to it will suffer irreparable damage."

"22. The cost of shipping rum in containers of one-gallon capacity or less is greater than the cost of shipping rum in larger containers."

"23. That the requirements that shipments of rum be made in containers of not more than one gallon is to deny the right to export rum in bulk, as the cost of such shipments would exceed the value of the commodity."

"24. There is no law in force at the present time in Puerto Rico fixing any standard of quality or providing for any inspection of rum manufactured or to be manufactured within Puerto Rico."

"25. The exportation and sale of alcoholic liquors manufactured in Puerto Rico, in Continental United States or elsewhere, will in no way deplete the revenues of Puerto Rico."

"26. That if the plaintiff is not permitted to use its corporate name its business will be greatly damaged and it will suffer great and irreparable loss."

ERRORS TO BE URGED.

The Circuit Court of Appeals erred:

1. In failing to hold Sections 44 and 44 (b) of the Spirits and Alcoholic Beverages Act of Puerto Rico, as amended, invalid as applied to petitioner because these sections attempt to destroy substantive rights in trade-marks guaranteed to petitioner by the 1929 Inter-American Convention and Protocol for Trade Mark and Commercial Protection.

2. In failing to hold said sections of the Puerto Rican Beverages Act invalid as applied to petitioner because in conflict with the Federal Alcohol Administration Act, and regulations thereunder, insofar as they seek to limit petitioner's right to market its products under its own name, trade-marks, trade names and brands, as approved by the Federal Alcohol Administration, and to ship said products in bulk to the United States, as permitted by the Federal Alcohol Administration.

3. In failing to hold that the Congress of the United States has acted in ratifying said 1929 Inter-American Convention and Protocol for Trade Mark and Commercial Protection and in adopting said Federal Alcohol

Administration Act, and has pre-empted the respective fields covered by said Convention and said Act, and that substantive rights obtained by petitioner thereunder may not constitutionally be abridged by the legislature of Puerto Rico.

4. In failing to hold that said sections of the Puerto Rican Beverages Act are in conflict with the equal protection and due process clauses of the Organic Act of Puerto Rico, and of the Fifth and Fourteenth Amendments to the Constitution of the United States, and that said Beverages Act denies petitioner equal protection of the laws and requires the destruction of its property without due process of law.

5. In failing to hold that the said sections of the Puerto Rican Beverages Act violate the Commerce Clause of the Constitution of the United States.

6. In holding that said sections of the Puerto Rican Beverages Act constitute a valid exercise of the police power.

SUMMARY OF ARGUMENT.

I.

Puerto Rico, as an organized territory, has been granted the right to legislate with respect to "all matters of a legislative character *not locally inapplicable.*" (Title 48, U. S. C., Section 821) Its legislative powers are not as extensive as those of a state (*Puerto Rico* v. *Shell Co.*, 302 U. S. 253, 262), are subject to the paramount interests of the nation as a whole, must not affect the free flow of commerce with the United States, and must yield to the national law in case of direct conflict.

II.

By contract and by virtue of the Inter-American Convention for Trade Mark and Commercial Protection, petitioner has the right to use certain valuable trade-marks in Puerto Rico and in the United States. In prohibiting the use of these trade-marks, the Puerto Rican statutes contravene the treaty and are invalid. (*Santovincenzo* v. *Egan*, 284 U. S. 30)

III.

In its right to use valuable trade-marks, petitioner has a property right that may not illegally be interfered with. (*Old Dearborn Distributing Co.* v. *Seagram-Distillers Corp.*, 299 U. S. 183, 194-195) The Puerto Rican statutes forbidding petitioner to use these trade-marks and barring the shipment of rum in bulk, effectively take petitioner's property without due process of law in violation of the Constitution of the United States and the Organic Act of Puerto Rico.

IV.

The Puerto Rican statutes permit petitioner's competitors to use trade-marks without restriction. Petitioner is the only one adversely affected by the legislation. (Finding 20, R. 114) The statutory prohibition is based on an unreasonable and discriminatory classification and denies to petitioner the equal protection of the law for the benefit of competitors. (*McFarland* v. *American Sugar Refining Co.*, 241 U. S. 79; *Mayflower Farms, Inc.* v. *Ten Eyck*, 297 U. S. 266; *Cotting* v. *Kansas City Stock Yards Co.*, 183 U. S. 79)

V.

The Puerto Rican statutes are not inspection statutes. They do not fix any standard of quality and do not affect the territorial revenues. (Findings 24, 25, R. 114) They are not concerned with the preservation of order, the public safety, health, morals or welfare. They are not a proper exercise of the police power. (*Mugler* v. *Kansas*, 123 U. S. 623) They are an attempt to regulate commerce in rum far beyond the borders of Puerto Rico.

VI.

The Congress of the United States, in the Federal Alcohol Administration Act, has legislated with reference to commerce and intoxicating liquors within Puerto Rico and between Puerto Rico and any other part of the United States. Petitioner has basic permits from the Federal Alcohol Administration to distill rum in Puerto Rico and to use thereon labels containing certain trade-marks. (Findings 15, 16, R. 112) As the Puerto Rican statutes deny the right to use these trade-marks, they must yield to the superior federal

power with which they are in conflict and cannot deprive petitioner of the right granted to it under the Federal Alcohol Administration Act. (*McDermott* v. *Wisconsin,* 228 U. S. 115)

VII.

This legislation, by its terms, places restrictions on commerce between Puerto Rico and the United States. In accomplishing its stated purpose, it will directly burden commerce between the various states of the United States in violation of the Commerce Clause. (*Foster-Fountain Packing Co.* v. *Haydel,* 278 U. S. 1; *Vance* v. *W. A. Vandercook Co.,* (No. 1) 170 U. S. 438, 444; *Carter* v. *Carter Coal Co.,* 298 U. S. 238. See also *Talbott* v. *Silver Bow County,* 139 U. S. 438; *Stoutenburgh* v. *Hennick,* 129 U. S. 141.)

ARGUMENT.

I. The Legislative Power in Puerto Rico is Limited to Matters of Purely Local Concern.

Puerto Rico is an organized territory not yet incorporated into the United States. *Kopel* v. *Bingham*, 211 U. S. 468, 476. Final authority in connection with the Island government and laws is derived from the Congress of the United States. That authority is exercised under Art. IV, Sec. 3, Cl. 2 of the Constitution.

By custom, organized territories are allowed a considerable measure of self government under the terms of an organic act passed by Congress. The present Organic Act of Puerto Rico dates from 1917. (c. 145, 39 Stat. 951; Title 48, U. S. C., Sec. 731, *et seq.*) It created a territorial legislature and extended its authority to "all matters of a legislative character not locally inapplicable". (Section 37; Title 48 U. S. C. Sec. 821) As this Court has phrased it, the legislative powers conferred were nearly, if not quite, as extensive as those exercised by State legislatures. *Puerto Rico* v. *The Shell Co.*, 302 U. S. 253, 262.

But the words *not locally inapplicable* mean that the legislature has powers to make laws concerning matters of local application only. It has never been held, and it would seem idle to argue, that Puerto Rico, under the guise of local legislation and the exercise of the police power, can affect larger interests of commerce and trade beyond its own boundaries. An organized territory has only the powers actually granted to it by Congress, unlike a state which possesses all powers not specifically granted away. (*Pennoyer* v. *Neff*, 95 U. S. 714, 722) No matter how liberally the territorial powers are construed, the basis upon which they rest is far more narrow than in the case of state powers. Even state powers are subject to the universal limitation

that they may not obstruct interstate and foreign commerce. Compare the opinion of Mr. Justice Holmes in *Sanitary District of Chicago* v. *United States,* 266 U. S. 405, where it is said, page 426, that "the interests of the nation are more important than those of any state".

Within its sphere the state is sovereign but a territory and its laws are always subject to the paramount interests of the nation as a whole. In case of any conflict with these interests, either direct or necessarily implied, the national rather than the local preferences and policies must prevail. The territory exists for the benefit of the nation; not the nation for the territory.

Territorial law must always yield to national law in case of a direct conflict. It appears equally apt to suggest that the local law must fall where it ventures into fields which it was never intended to penetrate. It does not appear that Congress had any intention, in the Organic Act, of delegating authority to Puerto Rico to interfere with matters directly affecting the free flow of trade and commerce with the United States, such as the crippling rule against bulk shipments of rum from Puerto Rico. Nor does it appear that Congress intended Puerto Rico to have the power to favor certain local producers of rum in "the continental American market, and in any other possible purchasing market".[2] It is unlikely that Congress intended that Puerto Rico should be allowed to discriminate against Cuban trademarks because of their previous foreign use, when Congress had ratified a treaty agreeing to "protect" those marks.

Assuming that Congress and Puerto Rico may each legislate upon the same subject, the legislation of the territory must be carefully scrutinized to see, first, that

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[2] Sec. 1(b) Act of May 15, 1937, quoted on page 8 of this brief.

it is free from conflict with the laws and treaties of the national government, and, second, that it does not overstep the bounds of purely local regulation. The present case, as will hereafter appear, is an example of direct conflict with laws and treaties of the United States. It is also an example of a legislative action beyond the scope of territorial legislative power.

II. The Puerto Rican Law is in Conflict With a Treaty of the United States.

By a proper contract in writing, petitioner is the owner of a regional right to use "the name Bacardi and/or Bacardi Rum and all and singular the trademarks, brands, labels, caps, bottles, packages, devices, designs and other distinctive appurtanances, accessories or adjuncts * * *, now owned or hereafter discovered, developed, and/or acquired by Cuban Bacardi", when used upon rum distilled and blended according to the formulas of Cuban Bacardi and under its supervision. (R. 294) This regional right extends to Puerto Rico and the continental United States. All rum produced by petitioner in Puerto Rico has been made under the formulas and supervision of Cuban Bacardi and is identical with the Cuban product. (R. 111)

The name "Bacardi", the representation of a bat and the labels were originally Cuban trade-marks. They were all duly registered in the United States Patent Office and in Puerto Rico, prior to the passage of the Act of May 15, 1936 and subsequent statutes. Before that date they were in actual use in both the United States and Puerto Rico. The right to use these distinctive evidences of genuineness is a valuable property right owned by petitioner which is threatened with destruction.

The Inter-American Convention for Trade Mark and Commercial Protection (46 Stat. L. 2907) was signed in 1929 by the representatives of the American Republics, including the United States and Cuba. It became effective in the United States, by Presidential proclamation, on February 27, 1931. It took effect in Cuba on March 12, 1930.

Petitioner submits that under the treaty provisions, the trade-marks of nationals of the contracting nations, properly registered here, may not be discriminated against because of their origin and prior use in a signatory country. The fact which makes the trade-mark protectible under the treaty is the reason assigned for its destruction under the Puerto Rican statutes.

As stated in the preamble to the Treaty, the delegates of the several signatory countries met in Washington in 1929;

> "Animated by the desire to reconcile the different juridical systems which prevail in the several American Republics; and
>
> "Convinced of the necessity of undertaking this work (for the protection of trade-marks, trade names and for the repression of unfair competition and false indications of geographical origin) in its broadest scope, with due regard for the respective national legislations, * * *".

In this spirit the delegates adopted, among others, the following provisions:

Article 3.

> "Every mark duly registered or legally protected in one of the Contracting States shall be admitted to registration or deposit and legally pro-

tected in the other Contracting States, upon compliance with the formal provisions of the domestic law of such States.'"[3]

Article 5.

"Labels, industrial designs, slogans, prints, catalogues or advertisements used to identify or to advertise goods, shall receive the same protection accorded to trade-marks in countries where they are considered as such, upon complying with the requirements of the domestic trade-mark law."

Article 11.

* * *

"The use and exploitation of trade-marks may be transferred separately for each country, and such transfer shall be recorded upon the production of reliable proof that such transfer has been executed in accordance with the internal law of the State in which such transfer took place. Such transfer shall be recorded in accordance with the legislation of the country in which it is to be effective."

Article 14.

"Trade names or commercial names of persons entitled to the benefits of this Convention shall be protected in all the Contracting States. Such pro-

[3]Article 3, above quoted, may be compared with Article 6 of the 1911 Convention for the Protection of Industrial Property, Treaty Series, No. 579, 38 Stat. L. 1658, to which both the United States and Cuba were parties, as well as other nations of Europe and Asia and the Americas. Article 6 of the 1911 Convention reads in part:

"Every trade-mark regularly registered in the country of origin shall be admitted to registration and protected in the form originally registered in the other countries of the Union."

tection shall be enjoyed without necessity of deposit or registration, whether or not the name forms part of a trade-mark."

Article 20.

"Every act or deed contrary to commercial good faith or to the normal and honorable development of industrial or business activities shall be considered as unfair competition and, therefore, unjust and prohibited."

Article 32.

"The administrative authorities and the courts shall have sole jurisdiction over administrative proceedings and administrative judgments, civil or criminal, arising in matters relating to the application of the national law."

Article 35.

"The provisions of this Convention shall have the force of law in those States in which international treaties possess that character, as soon as they are ratified by their constitutional organs."

No special legislation implementing this treaty is necessary in the United States. Since the Cuban trademarks were properly registered here under existing law, they were at once entitled to all the benefits of treaty protection and petitioner, under Art. 32, above quoted, was entitled to resort to the courts to insure that protection. Where rights of the person or in property, as distinct from political advantage to the nation, are guaranteed by a treaty, it is self-executing when the person or his property is brought within the terms of the treaty and is given the right to resort to

the courts for protection. *Head Money Cases,* 112 U. S. 580, 598-599; *United States* v. *Rauscher,* 119 U. S. 407, 419; *Asakura* v. *Seattle,* 265 U. S. 332.

"A treaty is primarily a compact between independent nations. It depends for the enforcement of its provisions on the interest and the honor of the governments which are parties to it. If these fail, its infraction becomes the subject of international negotiations and reclamations, so far as the injured party chooses to seek redress, which may in the end be enforced by actual war. It is obvious that with all this the judicial courts have nothing to do and can give no redress. But a treaty may also contain provisions which confer certain rights upon the citizens or subjects of one of the nations residing in the territorial limits of the other, which partake of the nature of municipal law, and which are capable of enforcement as between private parties in the courts of the country. An illustration of this character is found in treaties, which regulate the mutual rights of citizens and subjects of the contracting nations in regard to rights of property by descent or inheritance, when the individuals concerned are aliens. The Constitution of the United States places such provisions as these in the same category as other laws of Congress by its declaration that 'this Constitution and the laws made in pursuance thereof, and all treaties made or which shall be made under authority of the United States, shall be the supreme law of the land.' A treaty, then, is a law of the land as an act of Congress is, whenever its provisions prescribe a rule by which the rights of the private citizen or subject may be determined. And when such rights are of a nature to be enforced in a court of justice, that court resorts to the treaty for a rule of decision for the case before it as it would to a statute." (*Head Money Cases, supra,* pages 598-599)

Article 11 of the treaty when read with Article 3, recognizes a substantive right in trade-marks, separate and apart from the business with which they were originally identified. In so doing it adds to the common law concepts of trade-marks, some of the principles of the civil law prevailing in Latin American countries.

Under the common law, a trade-mark is not recognized as an independent property right disconnected from the business in which it is used. Such a trade-mark may not be separately assigned; it can be transferred only with the transfer of good will and some product or business with which the mark has become identified. Registration does not create the right to use the trade-mark. It is allowed in recognition of a right already acquired by appropriation and use.

Under the civil law, registration is ordinarily all important and the right to use the mark is dependent upon prior registration and not prior use. Once registered under the civil law, the registrant acquires all the substantive rights which prior use in connection with a product or business confers in the common law countries.

This treaty attempts to reconcile the differing concepts of the two different legal systems and thereby to secure the utmost in protection to those entitled to use the trade-marks in the countries of their origin. "Every mark duly registered or legally protected" in the country of origin "shall be admitted to registration or deposit and legally protected" in the other countries adhering to the treaty. (Article 3) We construe this language to mean that the registration under the federal statutes or in Puerto Rico of a trade-mark originally registered in Cuba preserves both nationally and in Puerto Rico those substantive rights which registration gave in the country of origin.

Another recognition by the treaty of the civil law standards which the common law did not theretofore recognize is the right given by Article 11 to use and exploit the trade-marks separately. Article 3 and Article 11, taken together evidence an intention that the owner of a trade-mark shall receive the same protection and have the same latitude in dealing with the mark in all other countries that are parties to the treaty, that he is entitled to claim in his own country. Rights thus granted are reciprocal in the truest sense and the only requirements are that the marks be entitled to registration and that they be so registered in each country where protection is sought.

The respondents urged and the court below held that, while this treaty was effective in guaranteeing protection against unfair competition, it did not afford relief against it when sanctioned by statutes of a territorial legislature. But where the denial of the right to use lawfully registered trade-marks, including the distinctive portion of petitioner's corporate name[4], is solely

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[4] Respondent, treasurer of Puerto Rico, raises the point that Sec. 40 of the Act of June 30, 1936, as amended by the Act of May 15, 1937, (quoted R. 107-108) requires that the name of the bottler or canner (not the name of the distiller or blender) appear upon the label attached to the goods. But where that name, or the distinctive part of it, is a trade-mark, forbidden by Sec. 44 to appear upon the label, we assume, in accordance with ordinary principles of statutory construction, that the particular prohibition governs and that the word "Bacardi" may not be used. Furthermore, it is the manufacturer whose name is important in this case, particularly in view of the shipments to be made in bulk to the United States for bottling and distribution there. The point made by respondent is an afterthought and fails even partially to save the statute.

for the purpose of giving an artificial and arbitrary advantage to others in the same business, unfair competition is as much present as though the competitors, by law, were made free to use petitioner's marks. In both cases petitioner needs and can rely upon the "protection" which the treaty explicitly gives.

The argument which respondents have advanced and which the Circuit Court of Appeals adopted, is one which must depend upon a narrow construction of the words of the treaty, although the treaty recites that it is undertaken in the "broadest scope". The argument casts doubt upon the good faith of the United States in its relations with foreign nations. By no stretch of the imagination can the United States be said to fulfill its treaty obligation to *protect* these marks, when one of its territories seizes upon the very fact of their foreign origin and use to impose penalties.

The attitude of Cuba in this matter has already been brought to the attention of the court in this case in a memorandum filed by the Department of Justice transmitting a letter from the Cuban Ambassador to our State Department. That letter, couched in diplomatic language, is a protest against threatened discrimination affecting Cuban trade-marks registered in this country in accordance with the terms of the treaty. It is printed as Appendix A to this brief.

To adhere to the construction of the treaty given below will violate the principles of international comity and present the spectacle of a solemn obligation of the United States being set at naught by the ill considered action of one of its dependencies.[5]

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[5] *Geofroy* v. *Riggs*, 133 U. S. 258, holds that treaties must be liberally construed so as to carry out the apparent intention of the parties and that following this construction the words "states of the Union" in a treaty between the United States and France

Treaties are the supreme law of the land (Constitution, Art. VI, Cl. 2) and a statute of any state or territory which conflicts with them must be held invalid to the extent of the conflict. *Santovincenzo* v. *Egan*, 284 U. S. 30, and cases cited, page 40. In the interpretation of treaties this court has said:

> "In choosing between conflicting interpretations of a treaty obligation, a narrow and restricted construction is to be avoided as not consonant with the principles deemed controlling in the interpretation of international agreements. Considerations which should govern the diplomatic relations between nations, and the good faith of treaties, as well, require that their obligations should be liberally construed so as to effect the apparent intention of the parties to secure equality and reciprocity between them. For that reason if a treaty fairly admits of two constructions, one restricting the rights which may be claimed under it, and the other enlarging it, the more liberal construction is to be preferred. *Jordan* v. *Tashiro*, 278, U. S. 123, 127; *Geofroy* v. *Riggs*, 133 U. S. 258, 271; *In re Ross*, 140 U. S. 453, 475; *Tucker* v. *Alexandroff*, 183 U. S. 424, 437; *Asakura* v. *Seattle*, 265 U. S. 332. Unless these principles consistently recognized and applied by this court, are now to be discarded, their application here leads inescapably to the conclusion that the treaties, presently involved, on their face require the extradition of the petitioner, even though the act with which he is charged would not be a crime if committed in Illinois."

This quotation is from *Factor* v. *Laubenheimer*, 290 U. S. 276, at pages 293-294. The case considered the effect of an extradition treaty with Great Britain and

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include all political communities exercising legislative powers, not only in the United States, but also in the territories and the District of Columbia.

the necessity of over-riding the law of a single state in order to give effect to the intention of the high contracting parties. The treaty named several crimes, for one of which the fugitive had been indicted in England. He took refuge in Illinois where his act was not a crime and it was argued on his behalf that he could not be extradited for that reason. This court came to the conclusion that, since the crime was within the terms of the treaty, the writ of *habeas corpus* should be discharged. In its opinion the court weighed the result which would follow from allowing the treaty operation to vary, in this country, according to the laws of the individual states, saying, at page 300:

> "It is of some significance also that the construction which petitioner urges would restrict the reciprocal operation of the treaty. Under that construction the right to extradition from the United States may vary with the state or territory where the fugitive is found although extradition may be had from Great Britain with respect to all the offenses named in the treaty."

In the present case the question is whether, in our international relations, we can afford to permit treaties to be interpreted in divers ways, depending upon the laws which local self governments may see fit to enact. Other nations contract for their whole people and have the right to expect us to do the same. It is not necessary in this case to determine when, if ever, Puerto Rico might have the right to nullify the protection of foreign trade-marks which this treaty guarantees. The desire of the territorial legislature to stifle free competition by a competitor, who is strong because his goods enjoy the good will of the public, by denying him the right of trade-mark exploitation specifically granted

by the treaty, would seem not to be a ground upon which the treaty violation may be excused. To hold otherwise is to defeat the intent of the treaty in a way particularly calculated to bring this country into disrepute in its international relations and to invite reprisals.

III. The Puerto Rican Statutes Deprive Petitioner of Due Process of Law and Deny it the Equal Protection of the Laws to Which it is Entitled.

It has been suggested, but never decided, that the safeguards contained in the Fifth and Fourteenth Amendments to the Constitution of the United States do not apply to the territory of Puerto Rico. The point does not seem worth elaborating since, with respect to due process and equal protection, Sec. 2 of the Organic Act of Puerto Rico provides: (c. 145, 39 Stat. 951; Title 48, U. S. C. Sec. 737)

> "*Bill of rights and restrictions:* No law shall be enacted in Porto Rico which shall deprive any person of life, liberty or property without due process of law, or deny to any person therein the equal protection of the laws."

In the light of this provision it becomes immaterial whether the claimed violation of petitioner's rights is a violation of the Constitution or of the Organic Act. It is plain that Congress intended the scope of the protection afforded by the Organic Act to be the same as that extended by the Fifth and Fourteenth Amendments.

The action of the Puerto Rican legislature can be justified only as an exercise of the police power. The Circuit Court of Appeals, differing from the trial court, sustained the statute as within the police power. We shall first examine the extent to which the due process

and equal protection guarantees have been violated by such action and then attempt to show that the police power available to the legislature is not sufficient.

A. Petitioner has been denied due process of law.

In the substantive sense, due process of law deals with the destruction or impairment of vested rights. By contract petitioner has a vested property right to employ the Bacardi trade-marks when they are used in conjunction with rum made in accordance with the secret formulas disclosed to it by Cuban Bacardi. For these privileges petitioner pays a substantial royalty, amounting to $1.40 per gallon of rum sold. (R. 296) The good will and the trade-marks that symbolize it are property in a very real sense. *Old Dearborn Distributing Co.* v. *Seagram-Distillers Corp.*, 299 U. S. 183, 194-195. As such they demand protection from unlawful interference. The right to make and sell Bacardi rum and the right correctly to identify it go hand in hand. One right without the other loses most of its value. The product unless labelled when bottled for consumption, has no distinctive appearance which would enable a prospective purchaser to distinguish it from competing brands. He buys on the basis of quality previously determined by his own experience or that of others. The only guarantee of identity and quality is the brand, the visible and visual evidence to the purchaser that he is getting the uniform and palatable product which he wishes to buy.

Bacardi rum has been known since 1862. In that time it has built up a following based upon quality but guided in the purchase of the rum by the name and trade-marks. It is no exaggeration to say that, in this country at least, Bacardi is one of the best known and most frequently purchased brands of rum.

The legislature of Puerto Rico, with considerable ingenuity, has enacted laws which permit petitioner to manufacture the genuine Bacardi rum but which deny it the right to identify the rum as such. If petitioner must attempt to duplicate under another designation, the Bacardi market, now existing by reason of public acceptance of the product, such an effort would require years of time and thousands of dollars in money spent to acquaint purchasers with what, to them, would be a new and unknown product. Petitioner is faced with the immediate loss of the greater part of its market if it is denied the right to use the familiar trademarks on rum which, as the District Court found, is in fact Bacardi rum. (Finding 12, R. 111) Beyond that, petitioner would in the future be required to spend vast amounts to recapture its old market under a new name.

This threatened and imminent damage amounts, we submit, to a taking of property without due process of law.

Likewise, to require petitioner to refrain from shipping rum to the United States in containers holding more than one gallon is to strike a severe blow at its business. The cost of shipping rum in containers of one-gallon capacity or less is greater than the cost of shipping in larger containers. (Finding 22, R. 114; R. 151-152, 174-175) Petitioner has not shipped rum in bulk since the commencement of this suit since it was unable to make long term commitments to potential purchasers in the United States. (R. 150) Petitioner was thus compelled to refuse an inquiry for the purchase of 100,000 gallons of rum because of inability to guarantee bulk shipments. (R. 167, 150) Manufacturers of bottled cocktails which use rum as a base must buy it in bulk. Buying it by the bottle would be too expensive for this purpose. Petitioner has been

compelled to refuse offers for this class of business in the United States. (R. 150, 151) (See also Findings 19, 22, 23, R. 112, 114) No valid reason for prohibiting these bulk shipments appears anywhere in this record.

Enough has been said to show the real and substantial destruction of petitioner's property arising out of the statutes here attacked. The lack of justification for such legislation will be argued hereafter. In the absence of justification there is a deprivation and denial of due process of law in a manner forbidden by the Constitution and by the Organic Act of Puerto Rico.

B. Petitioner has been denied equal protection of the laws.

The equal protection clause frequently goes hand in hand with the due process clause but the protection which they guarantee is not necessarily the same and the limits of that protection frequently differ. *Truax* v. *Corrigan,* 257 U. S. 312, 331-334. The due process clause is concerned with the preservation of fundamental rights of the person or in property. The equal protection clause strikes down unfairness in the sense of inequitable discrimination between persons similarly situated. The only right to be considered in applying the equal protection doctrine is the right not to have one man unreasonably preferred to the detriment of another. It is a doctrine of equity and fair dealing, a brake on arbitrary governmental action. Its equitable nature is also shown by the decisions in certain classes of cases that hold it embraced by implication in the Fifth Amendment to the Constitution. *Sims* v. *Rives,* 84 F. (2d) 871, 878; *United States* v. *Yount,* 267 Fed. 861, 863.

Like many rules of equitable rather than legal application, the equal protection doctrine may be stated

in general terms but has never assumed hard and fast form. We approach it in the spirit of inquiry into, *first,* whether there has been a discrimination against petitioner; *second,* whether that discrimination appears from the record to be arbitrary and unreasonable; *third,* whether Puerto Rico had power to order the discrimination; and, *lastly,* whether the exercise of the power, if it exists, is in aid of a proper public purpose.

It has never been denied that petitioner has been discriminated against. The original act of May 15, 1936 shows this clearly when it states that if any type of distilled spirits becomes nationally or internationally known by reason of its brand, trade mark or trade name showing the proper name of its manufacturer, such name shall not appear upon the labels for any distilled spirits manufactured in Puerto Rico. In different words the same prohibition is retained, in the subsequent acts of June 30, 1936 and May 15, 1937. So far the discrimination is against petitioner and all others having a famous name.

But the original and subsequent acts go further. Not all distillers are discriminated against, even though their names and trade-marks may have been well and favorably known outside of Puerto Rico. If any manufacturers had the good fortune to have used their names and trade-marks in Puerto Rico on or before February 1, 1936 (three and a half months before the first of these acts was passed) they are exempt from all prohibitions respecting future use. But this blanket exemption alone was not deemed sufficient. Section 7 of the Act of May 15, 1937 goes beyond even this. If a trade-mark was not in use in Puerto Rico on or before February 1, 1936 but was used elsewhere prior to that date, it may be thereafter used in Puerto Rico upon one condition; the prior use must have been confined to the continental United States.

Examined alone, without the background of the record, these several statutes with their juggling of dates and exemptions, appear meaningless. But when read in conjunction with the evidence and findings in the case, it appears that petitioner and petitioner alone is the target of the enactments and left outside the pale. It is the only company unfavorably affected, although at least three others were using trade-marks and labels previously in use outside of Puerto Rico. (Finding 20, R. 114) Nor does this legislation necessarily discourage foreign corporations from operating distilleries on the Island. At least two corporations, organized outside of Puerto Rico but manufacturing rum there, were not affected. (R. 173)

This legislation establishes a number of sub-classifications among those classed as producers of rum.

1. Manufacturers using foreign trade-marks on rum produced in Puerto Rico, where such use took place prior to February 1, 1936.

2. Manufacturers regardless of the date of their coming to Puerto Rico, using foreign trade-marks on rum produced in Puerto Rico, where such use did not take place in Puerto Rico prior to February 1, 1936 but where, prior to that date, the trade-marks in question had been used only in the United States.

3. Manufacturers, properly admitted to do business in Puerto Rico after February 1, 1936 and prior to the passage of the Act of May 15, 1936, using foreign trade-marks on rum produced in Puerto Rico and where, prior to that date, the trade marks in question had been used in the United States and elsewhere.

4. Manufacturers coming into Puerto Rico after the passage of the Act of May 15, 1936 and subsequent

laws, using foreign trade-marks previously used outside Puerto Rico.

Members of classes 1 and 2 are permitted to use their foreign trade-marks; members of classes 3 and 4 are not permitted to use such marks. Petitioner is and can be the only member of class 3, a corporation qualified to do business before the discriminating legislation was enacted and to whom it is applied retroactively. Petitioner is the only rum producer using trade-marks popular outside of Puerto Rico who entered Puerto Rico after February 1, 1936 and before the objectionable statute was enacted. Class 3, with petitioner as its only occupant, was closed by the legislative enactment. There are, so far as known, no members of class 4, who would enter Puerto Rico with knowledge of an already existing law. The law is retroactive as against petitioner. It can have no retroactive effect against any but petitioner.

Respondents have attempted to justify the classification based on use prior to February 1, 1936, as the exemption of a class already established and in operation before the restrictive statute was enacted. They state that the first temporary act was enacted May 15, 1936, and that petitioner did not acquire its rectifier's permit from Puerto Rico until July 20, 1936. They recognize, however, that petitioner had qualified to engage in the manufacture and sale of rum in Puerto Rico before the passage of the act, receiving a certificate of registration as a foreign corporation on March 31, 1936, and a license on April 6, 1936. They also recognize that petitioner's federal permit under which it operated in Pennsylvania was amended on March 28, 1936, to authorize operation in Puerto Rico, that a building for the manufacture of rum was leased and that some $45,000 had been expended between April

6 and May 15, 1936, when the restrictive statute was first enacted.

Respondents admit that a substantial question is presented under the equal protection clause, but attempt to overcome these facts by contending that, because of certain provisions in the Organic Act for Puerto Rico, the bill which became the law of May 15, 1936, must have been introduced in the legislature on or before March 21, 1936. The mere introduction of a bill cannot be given the same effect as its enactment. It cannot be assumed that the legislator introducing a bill controls the vote of the entire legislature. Furthermore, petitioner is advised that the bill, as introduced did not contain the objectionable provisions quoted on page 6 hereof. These were amendments adopted shortly before the passage of the bill. The record shows that the petitioner's vice-president, Mr. Bosch, arrived in Puerto Rico on February 22, 1936, that he concluded to establish a plant there and that arrangements for lease of the building had been completed some time before March 21, 1936. (Finding 13, R. 111-12; R. 140, 305-7) So, while petitioner was not actually in operation when the bill was introduced, it was established in the sense that the decision had been made to operate in Puerto Rico, steps to that end had been taken, obligations had been incurred, and commitments had been made. Doubtless petitioner's activities prompted the passage of the bill but, by the time the statute was enacted, petitioner was established and in operation and had made a substantial investment.

Therefore, the classification adopted by Puerto Rico, with February 1, 1936, as the determinative date, was not equivalent to a classification before and after the passage of the statute. Obviously this date was selected as the first round number before the visit to

Puerto Rico of petitioner's vice-president. The purpose of the classification was to foster monopoly and to give unfair competitive advantages to established distillers at the expense of a corporation of the United States, properly in Puerto Rico and lawfully using trade-marks originally registered with a friendly foreign power. It was a palpable discrimination in defiance of the equal protection clause of the Organic Act.

While there appears no reason why the equal protection clause should be applied differently to Puerto Rico than to a state, the decision below makes this point doubtful. This Court has not passed upon the Organic Act in this respect but its previous decisions indicate that equal protection is not afforded when all engaged in a similar business are given equal treatment in the *production* of goods, but one of them is forbidden to *market* its product except under an assumed name. "In such matters, the public is entitled to get what it chooses, though the choice may be dictated by caprice or by fashion or perhaps by ignorance." Mr. Justice Cardozo in *Federal Trade Commission* v. *Algoma Lumber Company,* 291 U. S. 67, 78. This expression is even more apt when the product and its excellence is identified by trade-marks which are a symbol of its quality.

The effect of the statutes in this case is similar to the one stricken down in *McFarland* v. *American Sugar Refining Co.,* 241 U. S. 79, 86, where Mr. Justice Holmes said:

> "The statute bristles with severities that touch the plaintiff alone, and raises many questions that would have to be answered before it could be sustained. We deem it sufficient to refer to those that were mentioned by the District Court; a classification which, if it does not confine itself to the American Sugar Refinery, at least is arbitrarily beyond possible justice * * *."

The District Court in our case found (Finding 20, R. 114) that:

> "Plaintiff appears to be the only company unfavorably affected by the provisions of the several acts as to the use of labels or trade-marks, although there are at least three other companies now operating in Puerto Rico who use on their products trade-marks and labels which were previously, in whole or in part, used outside the Island of Puerto Rico."

In *McFarland* v. *American Sugar Refining Co., supra,* a Louisiana statute of June 10, 1915 declared the business of buying and refining sugar to be impressed with a public interest. The statute provided for minute regulation and inspection of refineries; provided that any person guilty of monopoly and restraint of trade should be subject to criminal penalties, cancellation of license and the appointment of a receiver for the business. Any concern closing a Louisiana refinery would, under the law, be *prima facie* guilty of monopolizing and the same result followed in the event that a refiner paid less for sugar in Louisiana than in any other state. Section 15 of the act defined the business of refining sugar in such a way that only a large buyer of raw sugar, as distinct from a grower of cane, would be subject to the restrictions imposed. The American Sugar Refining Company, a New Jersey corporation with large refineries in Louisiana was apparently the only refiner in that state affected by the act. It was not denied that the legislation was aimed solely against that corporation.

While, as this Court said in its opinion in the *McFarland* case, many questions would have to be answered before a statute so bristling with severities could be

sustained, the obvious discrimination against the American Sugar Refining Company was a decisive factor in holding the Louisiana statute unconstitutional. Discriminatory legislation is unconstitutional, however general the terms in which it is expressed, where it is aimed against a single corporation and exempts all others in the same line of business. *Cotting* v. *Kansas City Stock Yards Co.*, 183 U. S. 79. In that case a Kansas statute regulating the charges of stockyard companies was shown to apply only to the Kansas City yards and not to its smaller competitors. Though the statute was couched in general terms, this Court said, p. 103:

> "* * * we cannot shut our eyes to the fact that this act is precisely the same in its effect as though the legislature had said in terms that the Kansas City stock yards alone shall be subjected to its provisions."

and again at pages 111-112:

> "But while recognizing to the full extent the impossibility of an imposition of duties and obligations mathematically equal upon all, and also recognizing the right of classification of industries and occupations, we must nevertheless always remember that the equal protection of the laws is guaranteed, and that such equal protection is denied when upon one of two parties engaged in the same kind of business and under the same conditions burdens are cast which are not cast upon the other."

The statute in the *Stock Yards* case was held unconstitutional by a unanimous Court. A majority of the Justices relied solely upon the lack of equal protection because only one of a group engaged in the same busi-

ness was singled out for regulation.[6] In so holding, the Court looked through the words of the act, perhaps innocent in and of themselves, and weighed their true nature in the light of their operation and effect. That test applied to our case reveals an unabashed intention on the part of Puerto Rico to hamstring Bacardi alone of all the rum producers on the Island. A case of discrimination as flagrant as this aimed against a single corporation has seldom been presented to this Court.

Back of the unconstitutional discriminations practiced by legislative bodies, there is frequently found the purpose to aid and benefit one or more business ventures at the expense of others similarly situated. See *Thompson* v. *Consolidated Gas Utilities Corp.*, 300 U. S. 55; *J. H. McLeaish & Co.* v. *Binford*, 52 F. (2d) 151, affirmed *per curiam* 284 U. S. 598; *State ex rel. Bacich* v. *Huse*, 187 Wash. 75, 59 P. (2d) 1101. That purpose in aggravated form is present in this case, where the legislature boldly states (Section 1 (b) of the Act of May 15, 1937, quoted on page 8 of this brief) its intention to favor "domestic" industry against foreign capital in all the markets of the world. Our position is that no statute can stand the test of the equal protection clause when it avowedly seeks to stifle competition by one competitor lawfully doing business in the jurisdiction, for the benefit of others better entrenched in the legislative favor.

Upon the question of classification by arbitrary dates, fixed retroactively rather than prospectively, the case most nearly in point is *Mayflower Farms, Inc.* v.

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[6] Compare also on the same point the cases of *Southern Bell Tel. & Tel. Co.* v. *Town of Calhoun*, 287 Fed. 381; *Hines* v. *Clarendon Levee District*, 264 Fed. 127; *Ho Ah Kow* v. *Matthew Nunan*, 5 Sawyer 552, Fed. Cas. No. 6546.

Ten Eyck, 297 U. S. 266. There the Court held unconstitutional a classification under the New York Milk Control Act based upon a date line drawn retroactively. Mr. Justice Roberts said, pages 273-274:

> "We are referred to a host of decisions to the effect that a regulatory law may be prospective in operation and may except from its sweep those presently engaged in the calling or activity to which it is directed. Examples are statutes licensing physicians and dentists, which apply only to those entering the profession subsequent to the passage of the act and exempt those then in practice, or zoning laws which exempt existing buildings, or laws forbidding slaughter houses within certain areas, but excepting existing establishments. The challenged provision is unlike such laws, since, on its face, it is not a regulation of a business or an activity in the interest of, or for the protection of, the public, but an attempt to give an economic advantage to those engaged in a given business at an arbitrary date as against all those who enter the industry after that date. The appellees do not intimate that the classification bears any relation to the public health or welfare generally; that the provision will discourage monopoly; or that it was aimed at any abuse, cognizable by law, in the milk business. In the absence of any such showing, we have no right to conjure up possible situations which might justify the discrimination. The classification is arbitrary and unreasonable and denies the appellant the equal protection of the law."

The *Mayflower Farms* case does not present so aggravated an instance of governmental aggression as the present one. There the party injured was caught in the trap without apparent malice. Here it is not denied that the trap was set malevolently to catch petitioner.

Borden's Farm Products Co. Inc. v. *Ten Eyck,* 297 U. S. 251, decided the same day as *Mayflower Farms, Inc.* v. *Ten Eyck,* opinions in both cases being written by Mr. Justice Roberts, is in no way conflicting. In the *Borden's* case the New York Milk Control Act, also involved in the other, was upheld insofar as it permitted price differentials between well and lesser known names in sale of milk to stores. The statute sanctioned the continuance of an established and working trade practice and not the creation of a new discrimination of the type found in the Puerto Rican statutes.

It seems a contradiction in terms to try to apply the test of reasonableness to so unreasonable a law. However, the avowed purpose must be examined to see how closely it checks with the result. The last act, that of May 15, 1937 presents in Section 1 (b) its "Declaration of Policy" seeking to

1. Protect the renascent liquor industry of Puerto Rico from all competition by foreign capital so as to avoid the increase and growth of financial absenteeism; and

2. To favor the domestic industry so that it may receive adequate protection against unfair competition in

(a) The Puerto Rican market;

(b) The continental American market; and

(c) In any other possible purchasing market.

The first object above noted is to protect a revived liquor industry (an industry high in favor in Puerto Rico which needs exports and particularly those which will consume its sugar) from all competition by foreign capital. We are not arguing here the right of Puerto Rico to refuse entrance to foreign corporations desir-

ing to do business in Puerto Rico. It has not done so and the question does not arise. Instead we find that at least three other foreign corporations manufacture rum in Puerto Rico, without in any way suffering from the ban of the statute. The language used is high flown but bears no particular relation to the results actually achieved.

The second object is to protect domestic industry against unfair competition here, there and everywhere. It is open to two objections. One is geographical. The legislature is attempting to extend its influence to places where its laws cannot operate. At least outside of Puerto Rico, the distillers of the Island must stand upon their own feet and their success will be measured by the acceptance which they can command for their products. The second objection is that no accusation of unfair competition has been made against petitioner. Much wisdom is often imputed to legislators but, in this instance, they could hardly be clairvoyant enough to know that petitioner would compete unfairly, whatever that term means in this connection.

The suppression of competition to benefit domestic industry was deprecated by Mr. Justice Cardozo in *Baldwin* v. *Seelig,* 294 U. S. 511. In commenting on the attempt by one state to protect its inhabitants from outside competition, he said at 523:

> "To give entrance to that excuse would be to invite a speedy end of our national solidarity."

We submit that the declaration of policy in the Puerto Rican Statute fairly interpreted, is nothing more than an announcement of a purpose to perpetuate a monopoly by turning back the calendar to a date which will conveniently exclude petitioner, otherwise properly in business on the Island. Such a purpose,

sought to be accomplished by the means adopted, cannot make reasonable an otherwise unreasonable discrimination.

Finally, the discrimination practiced is one against property of foreign origin, the Cuban trade-marks. These are entitled to protection upon compliance with the formalities of registration. The discrimination against its trade-marks threatens to damage petitioner to a very substantial extent. (Findings 21, R. 114) It is entitled to rely upon the equal protection of the laws as a defense against discriminatory legislation like this.

C. The so-called police power of Puerto Rico does not justify this legislation.

In the case of a state, the police power is that residual authority to regulate the affairs and conduct of its inhabitants which has not been expressly granted away. The power flows from sovereignty and is coextensive with it.

In the case of Puerto Rico, its so-called police power does not flow from any reservoir of authority but from a specific grant, the provision in the Organic Act that the legislature may make all laws not locally inapplicable. As heretofore discussed, the grant, although expressed in the negative, is one authorizing laws which apply locally. No power whatever is given to enact laws having a larger geographical application or effect. Since grants of legislative authority to political dependencies may not be extended beyond the ordinary meaning of their terms, the local autonomy of Puerto Rico must be limited strictly to the exercise of self government in local affairs.

As applied to a state, the police power is ordinarily conceived to be the power to enact laws, within constitutional limits, to promote the order, safety, health,

morals, and general welfare of society. The scope of the power is limited only by the constitutions, state and national. As applied to Puerto Rico, it may be conceded that a similar power exists to the extent that it does not geographically or politically infringe the paramount authority of the United States or of the several states within their own borders, and insofar as it does not attempt to deal with matters having more than local scope.

The findings of the District Court (Nos. 24, 25, R. 114) show that the legislation in question is not an inspection statute; that it does not fix any standard of quality; and that the revenues of Puerto Rico are in no way affected. By its terms neither is any question of importation of distilled spirits involved.

Likewise, it is self-evident that these statutes are not concerned with the preservation of order; with the public safety; with the public health; or, in any sense, with the public morals. The question of public morals may be adverted to since it is upon that ground that so many statutes regulating the liquor industry have been upheld in the past. Contrary to the trend of such decisions, it is apparent that Puerto Rico prefers to foster the manufacture and sale of rum, and particularly its exportation. Unfortunately for petitioner, this solicitude is expended entirely for the benefit of a small group who fear the healthy effects of competition in the open market.

There remains the question of legislation for the general welfare. This is a catch-all phrase which, we submit, should be construed here by the rule of *ejusdem generis,* lest the words be given so broad a meaning as to constitute a legislative blank check, subject to no limitation.

This law is not one against deceptive labeling. It is a law encouraging deception in the sense that the maker, petitioner here, is forbidden to identify itself with the commodity it makes. Its undisguised purpose is to relieve a few local distillers of the competition of petitioner's famous brand. It bears no relation whatever to the public welfare.

The question of refusal to permit foreign corporations to manufacture rum in Puerto Rico is not in issue here. Other foreign corporations operate for this purpose in Puerto Rico with the full consent of the authorities. As the District Judge said in this case, (R. 101):

> "If the Legislature of Puerto Rico desires to eliminate all competition by foreign capital as a means of protecting the liquor industry, and so as to avoid the increase and growth of financial absenteeism, there is a very simple and direct way to accomplish this purpose."

The legislature chose rather to permit foreign corporations, including petitioner, to enter the liquor business in Puerto Rico. It then chose to deny petitioner alone the right to use foreign trade-marks properly registered in Puerto Rico. In so doing the legislature has violated both due process and equal protection.

Respondents will doubtless argue that any regulation, however oppressive, of the liquor industry is permissible. This, we think, is untenable. Because Puerto Rico might have refused to permit rum to be produced at all, it does not follow that *any* regulations of the industry may be supported. "Liquor laws are enacted by virtue of the police power to protect the health, morals and welfare of the public." *Eberle* v. *Michigan*, 232 U. S. 700, 707. Where the regulation does not protect the public health, public morals, public revenue,

public order, or public safety, the discrimination and the taking of property are unsupported by any valid public purpose, and must fail. This legislation derives no more strength from its application to the liquor industry than it would have in connection with any one of a hundred other industries, concerning which Puerto Rico might legislate for a public purpose.

Respondents cannot cite any cases which will support the theory of unlimited legislative license to coerce a liquor manufacturer in the position of this petitioner. The leading case on regulation of intoxicating beverages expressly points out the limits beyond which state regulation may not go. *Mugler* v. *Kansas,* 123 U. S. 623, 663-664:

> "Undoubtedly the State, when providing, by legislation, for the protection of the public health, the public morals, or the public safety, is subject to the paramount authority of the Constitution of the United States, and may not violate rights secured or guaranteed by that instrument, or interfere with the execution of the powers confided to the general government. *Henderson* v. *Mayor of New York,* 92 U. S. 259; *Railroad Co.* v. *Husen,* 95 U. S. 465; *New Orleans Gas Co.* v. *Louisiana Light Co.,* 115 U. S. 650; *Walling* v. *Michigan,* 116 U. S. 446; *Yick Wo* v. *Hopkins,* 118 U. S. 356; *Morgan's Steamship Co.* v. *Louisiana Board of Health,* 118 U. S. 455."

Mugler v. *Kansas* denies the right of a state, in its liquor regulations to trespass upon the powers granted to the United States. Here Puerto Rico may not enlarge the powers granted to it by the Congress. Police power over local affairs does not extend to the flow of commerce from Puerto Rico to the mainland and, from a port on the mainland, among the several states. The record and findings show that petitioner has, or

would have, but for this statute, a very large trade in rum shipped from Puerto Rico to the United States. (Finding 18, R. 112) There is no power lodged in the Puerto Rican legislature to forbid the marketing in the United States of the rum so shipped under petitioner's trade-marks. Yet Section 44 as it now stands, forbids anyone to distill, rectify, manufacture, bottle or can any distilled spirits on which there appears, on the container, label, stopper or elsewhere, any trade-mark, brand, trade name, commercial name, corporation name, or any other designation, used outside the Island of Puerto Rico, et cetera.

This is a direct and positive prohibition against the use of such designations at any time, anywhere. But the legislature was not content with this prohibition. It went further and forbade (Section 44 (b)) exportation of rum in containers larger than one gallon. Because of the expense involved, forbidding bulk shipments prevents petitioner from bottling in the United States and applying its trade-marks to the bottles, here. As the Circuit Court of Appeals said, it was "presumably passed in part to prevent an evasion of the trade-mark prohibition." (R. 440)

Puerto Rico is thus trying to regulate commerce in rum far beyond its borders. We submit that it lacks the power to do so and that the statutes attempting it are void for that reason alone. No grant of power from Congress authorizing any such thing can be discovered in the Organic Act.

The cases of *Puerto Rico* v. *Shell Co.*, 302 U. S. 253 and *Puerto Rico* v. *Hermanos, Inc.*, 309 U. S. 543, though much relied upon by respondents as examples of police power, are not in point. In the *Shell* case the legislature of Puerto Rico adopted an anti-trust Act in all respects similar to the Sherman Act, except that

it applied only locally "in a town or among the several towns of Puerto Rico." It was held that this duplicate, but not inconsistent, legislation was unobjectionable. The *Hermanos* case involved the right of the government of Puerto Rico, under a local act, to bring *quo warranto* proceedings against a corporation violating a federal law limiting the number of acres which might be owned on the Island. The territorial statute was thus in direct aid of the federal law.

Neither of these cases is authority for the extension of police power into fields not heretofore recognized. Neither supports the theory that Puerto Rico's limited power to police local affairs permits it to regulate commerce beyond its borders. Similarly, the liquor cases decided since the Twenty-First Amendment do not justify these statutes. Most of these cases, finding the necessary authority in the Twenty-First Amendment, upheld laws regulating transportation or importation into a state. The restriction here is on export, a situation not covered by the Amendment. In *Premier Pabst* v. *Grosscup,* 298 U. S. 226, this Court did not pass on the constitutional question.

The most recent, and the only other late liquor case is *Ziffrin* v. *Reeves,* 308 U. S. 132. This case dealt with transportation of liquor from Kentucky to points outside and, we think, supports petitioner's position. The Kentucky statute limited liquor transportation to common carriers, which, this Court held, was a reasonable method of controlling liquor traffic. The decision recognized that measures designed to regulate the transportation of liquor must be "measures reasonably appropriate," even when in a statute enacted under the Twenty-First Amendment insofar as the measures related to matters other than transportation into a state for use therein. The reasonableness of the attempted classification was placed squarely in issue.

The statutes here violate the bill of rights of the Organic Act and are void for that reason.

IV. The Puerto Rican Statutes Are in Conflict With the Federal Alcohol Administration Act and Therefore Invalid to the Extent of the Conflict.

The entire interstate and foreign commerce in rum is regulated by the Federal Alcohol Administration Act, which became law on August 29, 1935 and was amended June 26, 1936. (c. 814, 49 Stat. 977; c. 830, 49 Stat. 1964; Title 27, U. S. C. Secs. 201-212)[1]

By definition in Section 17 the term *interstate or foreign commerce* as used in the act, means "commerce between any state and any place outside thereof, or commerce within any territory or the District of Columbia, or between points within the same state but through any place outside thereof;" *United States* means the "several states and territories and the District of Columbia;" *state* "includes a territory and the District of Columbia;" *territory* means Alaska, Hawaii and Puerto Rico;" and *distilled spirits* "means * * * rum."

Section 3 of the act recites that in order to effectively regulate interstate and foreign commerce in distilled spirits it shall be necessary to obtain basic permits from the administrator (1) to engage in the business (2) to sell or ship spirits in interstate or foreign commerce, (3) to import distilled spirits into the United States. Section 5 (e) prohibits the movement of distilled spirits in commerce unless they are labeled in accordance with the act and unless a certificate of label approval has been first obtained from the administrator. To obtain the certificate of label approval the applicant must, by

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[1] Pertinent provisions of this Act are printed as Appendix B to this brief.

the terms of Section 5 (e), comply with the regulations to be issued under the act.[8]

These regulations are a part of the record in this case, (R. 319-376) and provide in part with respect to labels that:

1. They shall bear a brand name, except that if distilled spirits are not sold under a brand name, then the name of the person required to appear on the brand label shall be deemed a brand name. (Sec. 32 (a) (1); Sec. 33 (a); R. 331)

2. On the labels of domestic distilled spirits bottled by or for the actual distiller, the name of the distiller and the place of distilling shall appear. (Sec. 32 (a) (3), R. 331; Sec. 35 (a), R. 333)

3. On labels of domestic distilled spirits bottled by or for the actual rectifier, the name of the rectifier and the place where blended, made or prepared shall appear. (Sec. 32 (a) (3), R. 331; Sec. 35 (b), R. 333)

4. The labels shall not contain any statement that is false or untrue in any particular or that, irrespective of falsity, directly or by ambiguity, omission or inference, tends to create a misleading impression. (Sec. 41, (a) (1); R. 342).

By Section 7 of the act any violation of either Section 3 or Section 5 shall be a misdemeanor, punishable by a fine of not more than $1,000.00 for each offense.

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[8] All duties of the administrator of the Federal Alcohol Administration have now, by reason of Reorganization Plan No. III, been transferred to the Deputy Commissioner of Internal Revenue in charge of the Alcohol Tax Unit. (Treasury Order No. 30, published in Federal Register, June 13, 1940, Vol. 5, No. 115, pages 2212-2213). The Treasury order effecting this transfer provides for the adoption of all prior regulations and no changes have been made in the regulations hereinafter referred to.

The intention expressed in the Federal Alcohol Administration Act is fully to regulate trade and commerce in distilled spirits, from the beginning of production to the point of sale to the ultimate consumer, so long as any part or all of the commerce occurs within a territory of the United States or between a territory and a state or between the several states. The right to distill, rectify, export, import, ship, bottle, label or sell is regulated minutely, either by the act or by its regulations. Such regulations, adopted in aid of the statute and not in conflict with it, have the force and effect of law. *United States* v. *Grimaud,* 220 U. S. 506; *United States* v. *Morehead,* 243 U. S. 607.

Under the act, petitioner has been granted basic permits to manufacture, ship and sell rum in interstate commerce, which by definition includes Puerto Rico. (Finding 15, R. 112: R. 268-273) Under the act petitioner has been granted certificates of approval of labels which specifically authorize the use of the label set out on page 5 of this brief. (R. 275) These basic permits and these certificates of approval are in full force and effect. Respondents do not contend that they have been improvidently granted or that there was any deception in their procurement.

The basic permit authorizing petitioner to ship rum from Puerto Rico to the United States does not restrict the size of the containers which may be used in shipment. The act itself contains no such restriction except in Section 6, where sale or shipments in bulk (containers larger than one gallon) are prohibited except to persons duly licensed. It is not contended that petitioner has ever violated Section 6. The act and regulations specifically authorize bulk shipments by petitioner. The regulations adopted pursuant to the act deal specifically with importations in bulk of all man-

ner of distilled spirits, including rum. (Sec. 51, R. 350) Nothing in these regulations would prohibit petitioner from making bulk shipments from Puerto Rico to itself or other authorized persons in the United States. It may reasonably be said that Congress has legislated in this matter and permits shipments of distilled spirits in bulk, contrary to the Puerto Rican statutes.

Certainly with respect to the commerce in rum between Puerto Rico and the United States there is a direct conflict between the Federal Alcohol Administration Act and the Puerto Rican law. Under the federal act petitioner's label is approved and that approval is in all respects consistent with the act and its regulations. Under the territorial act the label is condemned. The federal approval is grounded in large part upon the fact that the label identifies petitioner with the product. The Puerto Rican statute forbids this very thing. The federal act demands honesty in identification. The prohibition in the Puerto Rican statute explicitly forbids this same identification. The federal act permits petitioner to ship rum in bulk to the United States. The territorial act prohibits it. Such conflict cannot legally exist.

Where there is a direct conflict between two statutes, one or the other must give way. It has long been the law that the federal statute is supreme in such instances and that the local statute is invalid to the extent of the conflict, Constitution, Art. VI, Cl. 2; *Domenech, Treasurer of Puerto Rico* v. *National City Bank,* 294 U. S. 199; *Escanaba Company* v. *Chicago,* 107 U. S. 678, 683; *Gibbons* v. *Ogden,* 9 Wheat. 1, 210. This is true even as to local statutes enacted to protect the public health. *McDermott* v. *Wisconsin,* 228 U. S. 115.

In the *McDermott* case a conflict arose between a Wisconsin statute and the Federal Food and Drug Act of 1906 which controlled the interstate shipment of food and drugs as the Federal Alcohol Administration Act controls the manufacture, shipment and sale of intoxicating liquor. The Wisconsin statute prohibited the use of the designation "Corn Syrup." The Department of Agriculture, under the authority given by the Food and Drug Act approved a label using this designation. We have then a situation paralleling our case. A state statute *prohibiting* the use of certain statements conflicted with the *approval* of those statements by the appropriate federal department. Mr. Justice Day, in holding the Wisconsin statute invalid because of this conflict, conceded the authority of a state to make regulations consistent with the federal law but held that, pages 131-132:

> "While this is true, it is equally well settled that the State may not, under the guise of exercising its police power or otherwise, impose burdens upon or discriminate against interstate commerce, nor may it enact legislation in conflict with the statutes of Congress passed for the regulation of the subject, and if it does, to the extent that the state law interferes with or frustrates the operation of the acts of Congress, its provisions must yield to the superior Federal power given to Congress by the Constitution. *Texas & Pacific Ry Co.* v. *Abilene Cotton Oil Co.*, 204 U. S. 426; *Northern Pacific Ry. Co.* v. *Washington*, 222 U. S. 370; *Southern Ry. Co.* v. *Reid*, 222 U. S. 424; *Second Employers' Liability Cases*, 223 U. S. 1; *Savage* v. *Jones, supra*, 533."

While the source of the federal power in the *McDermott* case was the commerce clause, there is no doubt that the power of Congress to legislate for the terri-

tories gives it equal authority to require Puerto Rico to observe the Federal Alcohol Administration Act.

Where, as here, there is an actual conflict between a territorial statute and an act of Congress, only two steps need be taken in deciding the case. The first is to ascertain whether Congress has the power to pass the act with which the conflict occurs. The second is to ascertain the extent of the conflict so that the supremacy of the federal enactment may be declared in each particular instance.

In view of the plenary power of Congress under the Constitution over territories of the United States, there is no need to elaborate the argument that Congress has the power to apply the Federal Alcohol Administration Act to all commerce originating in Puerto Rico. Nor is it difficult to learn the extent of the conflicting provisions of the two acts. It is clear that petitioner has been specifically authorized by the administrator of the federal act to use a certain label, the essential part of which Puerto Rico specifically forbids to be used. If petitioner was compelled to comply with the Puerto Rican act and remove its name from the label it would be violating the federal act. It is likewise clear that petitioner is authorized by the federal act to make shipments in bulk from Puerto Rico and that this valuable privilege is denied by the territorial law. The conflict is direct. It cannot be removed by interpretation, and can have but one outcome. The Puerto Rican law is invalid to the extent that it attempts to override the will of Congress.

V. The Commerce Clause of the Constitution of the United States is Violated.

In this case the United States District Court for Puerto Rico held the Puerto Rican statutes to be in violation of the commerce clause of Art. I, Sec. 8, Cl. 3 of the Constitution and therefore invalid. The Circuit Court of Appeals was of opinion that the commerce clause was not applicable to Puerto Rico and was consequently not infringed. This Court has not passed upon this issue.

In support of its holding that the commerce clause of the Constitution does not extend to Puerto Rico, the Circuit Court of Appeals cited its earlier decision in *Lugo* v. *Suazo,* 59 F. (2d) 386, in which a similar bald statement appears at page 390.

There is very little authority upon the point. In *Stoutenburgh* v. *Hennick,* 129 U. S. 141, the then legislature of the District of Columbia passed an act which required, among other things, that a salesman soliciting business in the District for a concern doing business outside the District must secure and pay for a license. The act was held bad as beyond the powers of the legislature, which had only municipal authority. The opinion of Chief Justice Fuller shows an apparent intent to apply the commerce clause to the District of Columbia. The dissenting opinion by Mr. Justice Miller was based solely upon his view that the commerce clause was not applicable to a territory or the District of Columbia.

In deciding the present case, the District Court had the authority of *Porto Rican American Tobacco Co.* v. *Gallardo,* 13 P. R. Fed. 465, where one of the grounds given for nullifying a territorial statute of Puerto Rico was the commerce clause of the federal constitution.

While undoubtedly an argument can be made against

construing the power "to regulate commerce * * * among the several states" as including the power to regulate commerce between a territory and a state, the opposite conclusion does less violence to the purpose served by the commerce clause. Where a unified control over national and international, as distinct from purely local commerce, is both necessary and desirable, an interpretation which will attain that end is to be preferred. Precedent for this view is found in the construction of statutes to include territories where only the word *state* is mentioned. *Talbott* v. *Silver Bow County,* 139 U. S. 438 and cases cited on page 444; *Domenech, Treasurer of Puerto Rico* v. *National City Bank,* 294 U. S. 199, 204. In the *Talbott* case an act of Congress permitted *states* to tax the shares of national banks at the same rates as other moneyed capital in the hands of its citizens. By interpretation of the statute, the territory of Montana was accorded the same privilege and senseless distinctions were thus avoided.

We suggest that the application of the commerce clause to the shipment of goods originating in Puerto Rico and destined for continental United States is one which this Court might very well decide. Such a decision will settle a point of constitutional law of more than ordinary interest. However, petitioner is convinced that the commerce clause may properly be applied to this case upon other grounds and that, so applied, there has been a prohibited interference with the free flow of commerce in violation of the constitution mandate.

Rum manufactured in Puerto Rico is largely for shipment and sale to the United States. It is one of the most important manufacturing industries in Puerto Rico today. Exports of rum from the Island were

worth $5,254,828 in the fiscal year 1939-1940, a growth of more than 1000 per cent from $40,593 worth of rum exported in the fiscal year 1934-1935. (These statistics are taken from a pamphlet published in English by the Chamber of Commerce of Puerto Rico, copyrighted in the United States in 1940, entitled "Puerto Rican Rum in the United States Market." Because it gives an excellent idea of the rum industry as it exists today in Puerto Rico as well as the yearly shipments of cases of rum from Puerto Rico to the United States, by distillers, we have reprinted this pamphlet as Appendix C to this brief).

At the time this case was tried before the District Judge, petitioner had on hand 350,000 gallons of rum which it desired to ship to the United States. (Finding 18, R. 112) It also appeared that there was a demand in the United States for Bacardi rum in bulk, to be used there in the preparation of bottled Bacardi cocktails and for other purposes. (Finding 19, R. 112, 150, 151, 167) By reason of the injunction granted in this case, petitioner has been able to ship to the United States under its own trade-mark and label, 61,580 cases of rum in 1937, 24,507 cases in 1938, 73,950 cases in 1939 and 71,320 cases for the first six months of 1940. (See statistics of shipments, Appendix C). Three other Puerto Rican distillers have shipped comparable quantities during the same period and it is apparent that Bacardi has no monopoly on the business, having shipped approximately 20 per cent of the total in 1937, 9 per cent in 1938, 18 per cent in 1939 and 28 per cent in 1940.

Transportation of the rum from Puerto Rico to the United States does not end at the port of entry into this country. On the contrary, it continues throughout the nation and from state to state, wherever rum is

sold. As stated in Appendix C, "the brands manufactured by Puerto Rico's leading distilleries are offered for sale in every State of the Union where liquors are permitted to be sold." Mr. Bosch, Vice-President of petitioner, testified at the trial of this case that since the repeal of prohibition Bacardi rum has been sold in the United States in every state except the dry states. (R. 134) It has a wide spread distribution in this country based upon its well known name, which connotes a superior quality.

The commerce in Bacardi rum begins upon shipment from Puerto Rico. It does not end until the goods are at rest in the several states of the United States and have become part of the total property of the state, for sale to the ultimate consumer. This distribution from state to state and through one state into another is part of the original journey commenced in Puerto Rico and is the reason why the journey was undertaken. This portion of the transportation, plainly and without argument, is commerce as the word is used in Art. I, Sec. 8, of the Constitution. "The right to send liquors from one state into another, and the act of sending the same, is Interstate Commerce, the regulation whereof has been committed by the Constitution of the United States to Congress." *Vance* v. *W. A. Vandercook Co.* (No. 1) 170 U. S. 438, 444.

"As used in the Constitution, the word 'Commerce' is the equivalent of the phrase 'intercourse for purposes of trade' and includes transportation, purchase, sale and exchange of commodities between the citizens of different states." *Carter* v. *Carter Coal Co.* 298 U. S. 238, 298. If, as has been held, a state may not usurp the power of Congress over interstate commerce (*Bethlehem Motors Corp.* v. *Flynt,* 256 U. S. 421) it must follow that a territory has no such privilege.

The purpose of Puerto Rico is plain. In the declaration of policy added May 15, 1937 to its statutes governing the manufacture and sale of distilled spirits, it is stated that the policy of the legislature is to protect the renascent liquor industry against unfair competition "in the Puerto Rican market, the *continental American market, and in any other possible purchasing market.*" As heretofore pointed out, the alleged "unfair competition" is nothing more than the competition of petitioner's rum with the Bacardi trademarks on the label with the brands already selling in and from the Island.

To "protect" the few favored distillers in the continental American market and elsewhere, Puerto Rico enacted the provision denying the right to export rum in containers holding more than one gallon. The effect of this provision is to make it economically impossible for petitioner to bottle Bacardi in the United States and there to apply the prohibited trade-marks and corporate name. It also deprives petitioner of a large trade in bulk rum with users in the United States.

We submit that Puerto Rico has imposed a direct burden upon interstate commerce in a manner prohibited by the commerce clause and that this would be true even though Congress had not acted in this field by passing the Federal Alcohol Administration Act. Clearly commerce in intoxicating liquors is one demanding uniformity of regulation even in the absence of federal action. In cases of this class the constitution itself occupies the field whether Congress has entered it or not. Compare *Kelley* v. *Washington,* 302 U. S. 1, 9; *Baldwin* v. *Seelig,* 294 U. S. 511; *Atlantic Coast Line R. R. Co.* v. *Wharton,* 207 U. S. 328, 334; *Philadelphia & Southern Steamship Co.* v. *Pennsylvania,* 122 U. S. 326; and *South Carolina Highway Dept.* v. *Barnwell*

Bros. 303 U. S. 177, cases collected in footnote, pages 184, 185. It is all the more clear that Puerto Rico is attempting an unconstitutional interference with commerce when Congress has acted and has prescribed detailed rules for the conduct of the business of manufacturing and marketing distilled spirits.

In the section of this brief devoted to a discussion of the police power, we have shown what is readily apparent, that the statutes attacked do not protect health, safety or morals. The trial court found that they were not inspection statutes and in no way affected the revenues of Puerto Rico. (Findings 24, 25, R. 114) It is clear that they are in restraint of legitimate trade and commerce insofar as they are intended to operate and will operate materially to decrease the free flow of commerce from Puerto Rico to the United States and from one state to another in Bacardi rum manufactured by petitioner. It is equally clear that even though it should be held that the commerce clause does not apply to direct shipments from the Island to the Mainland,* it must and does apply to that portion of the commerce which takes place after continental United States is reached and before the packages come to rest in the place of ultimate sale to the consumer. To that extent at least, the commerce clause is applicable and infringed. Since the whole movement out of Puerto Rico is a continuous one, the whole regulatory scheme of the Puerto Rican legislation is bad and must fall. No warrant exists for giving extra territoriality to statutes which offend the federal Constitution.

This case is not unlike *Foster-Fountain Packing Co.* v. *Haydel*, 278 U. S. 1. There a business practice had grown up of taking shrimp from the waters of Louisi-

* Compare *American Trading Co.* v. *Heacock Co.*, 285 U. S. 247.

ana for canning at Biloxi, Mississippi, whence, when canned, the shrimp were shipped in interstate commerce. Louisiana passed a law, purporting to conserve the natural resources of the state, which prohibited the exportation of the shrimp unless the heads and hulls were removed. The real purpose was to force, through commercial necessity, the removal of the packing and canning industries from Mississippi to Louisiana. This appeared not only from the record but from the face of the statute which allowed free movement of the shrimp in interstate commerce provided the meat was removed from the hulls in Louisiana.

In the course of the opinion the court said, pages 10, 11:

> "One challenging the validity of a state enactment on the ground that it is repugnant to the commerce clause is not necessarily bound by the legislative declarations of purpose. It is open to him to show that in their practical operation its provisions directly burden or destroy interstate commerce. *Minnesota* v. *Barber,* 136 U. S. 313, 319. *Brimmer* v. *Rebman,* 138 U. S. 78, 81. In determining what is interstate commerce, courts look to practical considerations and the established course of business. *Swift and Co.* v. *United States,* 196 U. S. 375, 398. *Lemke* v. *Farmers Grain Co.,* 258 U. S. 50, 59. *Binderup* v. *Pathe Exchange,* 263 U. S. 291, 309. *Shafer* v. *Farmers Grain Co.,* 268 U. S. 189, 198, 200. Interstate commerce includes more than transportation; it embraces all the component parts of commercial intercourse among States. And a state statute that operates directly to burden any of its essential elements is invalid. *Dahnke-Walker Co.* v. *Bondurant,* 257 U. S. 282, 290. *Shafer* v. *Farmers Grain Co. supra,* 199. A state is without power to prevent privately owned articles of trade from being shipped and sold in interstate commerce on the ground that they are

> required to satisfy local demands or because they are needed by the people of the state. *Penna.* v. *West Virginia,* 262 U. S. 553, 596. *Oklahoma* v. *Kansas Nat. Gas Co.,* 221 U. S. 229, 255."

And again at pages 12, 13:

> "Consistently with the Act all may be, and in fact nearly all is, caught for transportation and sale in interstate commerce. As to such shrimp the protection of the commerce clause attaches at the time of taking. *Dahnke-Walker Co.* v. *Bondurant, supra. Penna.* v. *West Virginia, supra,* 596, *et seq.*" * * *
>
> "If the facts are substantially as claimed by plaintiffs, the practical operation and effect of the provisions complained of will be directly to obstruct and burden interstate commerce. *Penna.* v. *West Virginia, supra. Oklahoma* v. *Kansas Nat. Gas Co., supra.*"

In the *Foster-Fountain* case the shrimp were caught for export to a neighboring state. In the present case Bacardi rum is produced by petitioner in Puerto Rico for shipment to ports of entry in the United States and thence to the several states. In the cited case the state was "without power to prevent privately owned articles of trade from being shipped and sold in interstate commerce on the ground that they are required to satisfy local demands or because they are needed by the people of the State." In the present case Puerto Rico is without power to prevent privately owned articles of trade from being shipped and sold in interstate commerce on the ground (however erroneous) that others in the Puerto Rican liquor industry would benefit if the shipment and sale of a particular brand can be prevented.

Where a statute is obviously directed, not against the manufacture of a product, but against its sale outside the jurisdiction, that statute must be tested by careful comparison with the commerce clause, lest it be permitted to impede the free flow of lawful commodities in commerce. This is particularly so when Congress, as it has in the Federal Alcohol Administration Act, reserved to itself the right to regulate commerce in rum in Puerto Rico and between Puerto Rico and continental United States. When so tested, it is apparent that the Puerto Rican legislature has not only exceeded its powers in other ways but has attempted directly to regulate interstate commerce which right the Constitution gives to Congress alone.

Respectfully submitted,

EDWARD S. ROGERS,
KARL D. LOOS,
PRESTON B. KAVANAGH,
JEROME L. ISAACS,
Attorneys for Petitioner.

APPENDIX A.

Note Submitted to the Secretary of State on Behalf of the Cuban Government.

The following note was delivered to the Honorable Cordell Hull, Secretary of State, and by letter of April 2, 1940, was transmitted by the Secretary of State to the Attorney General, and was filed with this Court by the Solicitor General:

MARCH 25, 1940.

EXCELLENCY: The attention of my Government has been called to the case of *Bacardi Corporation of America* v. *Bonet,* now before the Supreme Court of the United States on petition for certiorari. That case presents the question of the validity of certain legislation of Puerto Rico in its application to the trade-marks and commercial names of Compañia Ron Bacardi, S. A. of Cuba, which had granted to Bacardi Corporation of America the right to use its trade-marks and commercial names in Continental United States and Puerto Rico. It is claimed by the petition in that case that the statute in question violates the Inter-American Trade-Mark Convention and Protocol of February 20, 1929, in that the very circumstance of use in Cuba which brings the marks and names within the protection of the Treaty is made the occasion, in the Puerto Rican Legislation, for prohibiting their use in connection with rum manufactured in Puerto Rico.

It is generally believed among trade-mark proprietors in Cuba that this Puerto Rican legislation violates the terms as well as the spirit of the Treaty to which Cuba and numerous other American countries are signatories. A decision by the highest Court of the United States upon that question is of great importance to Cuban nationals engaged in business in the United States and Puerto Rico.

as well as to the Government of Cuba in determining its own policies under the Treaty.

It is respectfully requested that the foregoing views of the Cuban Government be brought, if possible, to the attention of the Supreme Court of the United States in an appropriate manner for its consideration in the case which is now before it.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest and most distinguished consideration.

For the Ambassador:

José T. Barón,
Minister-Counselor.

His Excellency Mr. CORDELL HULL,
Secretary of State, Washington.

APPENDIX B.

Federal Alcohol Administration Act.

(c. 814, 49 Stat. 977; c. 830, 49 Stat. 1964)

(Title 27, U. S. C., Secs. 201-212)

Sec. 3. Unlawful Businesses Without Permit.—In order effectively to regulate interstate and foreign commerce in distilled spirits, wine, and malt beverages, to enforce the twenty-first amendment, and to protect the revenue and enforce the postal laws with respect to distilled spirits, wine, and malt beverages:

(a) It shall be unlawful, except pursuant to a basic permit issued under this Act by the Administrator—

(1) to engage in the business of importing into the United States distilled spirits, wine, or malt beverages; or

(2) for any person so engaged to sell, offer or deliver for sale, contract to sell, or ship, in interstate or foreign commerce, directly or indirectly or through an affiliate, distilled spirits, wine, or malt beverages so imported.

* * * * *

(b) It shall be unlawful, except pursuant to a basic permit issued under this Act by the Administrator—

(1) to engage in the business of distilling distilled spirits, producing wine, rectifying or blending distilled spirits or wine, or bottling, or warehousing and bottling, distilled spirits; or

(2) for any person so engaged to sell, offer or deliver for sale, contract to sell, or ship, in interstate or foreign commerce, directly or indirectly or through an affiliate, distilled spirits or wines so distilled, produced, rectified, blended, or bottled, or warehoused and bottled.

* * * * *

Sec. 4. Permits.—

* * * * *

(d) A basic permit shall be conditioned upon compliance with the requirements of section 5 (relating to unfair competition and unlawful practices) and of section 6 (relating to bulk sales and bottling), with the twenty-first amendment and laws relating to the enforcement thereof, and with all other Federal laws relating to distilled spirits, wine, and malt beverages, including taxes with respect thereto.

Sec. 5. Unfair Competition and Unlawful Practices. —It shall be unlawful for any person engaged in business as a distiller, brewer, rectifier, blender, or other producer, or as an importer or wholesaler of distilled spirits, wine, or malt beverages, or as a bottler, or warehouseman and bottler, of distilled spirits, directly or indirectly or through an affiliate:

* * * * *

(e) Labeling.—To sell or ship or deliver for sale or shipment, or otherwise introduce in interstate or foreign commerce, or to receive therein, or to remove from customs custody for consumption, any distilled spirits, wine, or malt beverages in bottles, unless such products are bottled, packaged, and labeled in conformity with such regulations, to be prescribed by the Administrator, with respect to packaging, marketing, branding, and labeling and size and fill of container. (1) as will prohibit deception of the consumer with respect to such products or the quantity thereof and as will prohibit, irrespective of falsity, such statements relating to age, manufacturing processes, analyses, guarantees, and scientific or irrelevant matters as the Administrator finds to be likely to mislead the consumers; (2) as will provide the consumer with adequate information as to the identity and quality of the products, the alcoholic content thereof (except that statements of, or statements likely to be considered as statements of, alcoholic content of malt beverages are hereby prohibited unless required by state law and except that, in case of wines,

statements of alcoholic content shall be required only for wines containing more than fourteen per centum of alcohol by volume), the net contents of the package, and the manufacturer or bottler or importer of the product; (3) as will require an accurate statement, in the case of distilled spirits (other than cordials, liqueurs, and specialties produced by blending or rectification), if neutral spirits have been used in the production thereof, informing the consumer of the percentage of neutral spirits so used and of the name of the commodity from which such neutral spirits have been distilled, or in case of neutral spirits or of gin produced by a process of continuous distillation, the name of the commodity from which distilled; (4) as will prohibit statements on the label that are disparaging of a competitor's products or of false, misleading, obscene, or indecent; and (5) as will prevent deception of the consumer by the use of a trade or brand name that is the name of any living individual of public prominence, or existing private or public organization, or is a name that is in simulation or is an abbreviation thereof, and as will prevent the use of a graphic, pictorial or emblematic representation of any such individual or organization, if the use of such name or representation is likely falsely to lead the consumer to believe that the product has been endorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of, such individual or organization:

* * * * *

In order to prevent the sale or shipment or other introduction of distilled spirits, wine, or malt beverages in interstate or foreign commerce, if bottled, packaged, or labeled in violation of the requirements of this subsection (1) no bottler of distilled spirits, no producer, blender, or wholesaler of wine, or proprietor of a bonded wine storeroom, and no brewer or wholesaler of malt beverages shall bottle, and (2) no person shall remove from customs custody, in bottles, for sale or any other commercial purpose, distilled spirits, wine, or malt bev-

erages, respectively, after such date as the Administrator fixes as the earliest practicable date for the application of the provisions of this subsection to any class of such persons (but not later than August 15, 1936 in the case of distilled spirits, and December 15, 1936, in the case of wine and malt beverages, and only after 30 days' public notice), unless, upon application to the Administrator, he has obtained and has in his possession a certificate of label approval covering the distilled spirits, wine or malt beverages, issued by the Administrator in such manner and form as he shall by regulations prescribe:

* * * * *

Sec. 6. Bulk Sales.—

(a) Offenses.—It shall be unlawful for any person—

(1) to sell or offer to sell, contract to sell, or otherwise dispose of distilled spirits in bulk except, under regulations of the Administrator, for export or to the following, or to import distilled spirits in bulk except, under such regulations, for sale to or for use by the following: A distiller, rectifier of distilled spirits, a person operating a bonded warehouse qualified under the Internal Revenue laws or a class 8 bonded warehouse qualified under the customs laws, a wine maker for the fortification of wines, a proprietor of an industrial alcohol plant, or an agency of the United States or any state or political subdivision thereof.

* * * * *

(c) "In Bulk."—The term "in bulk" means in containers having a capacity in excess of one wine gallon.

Sec. 7. Penalties; Jurisdiction.—The District Courts of the United States, the Supreme Court of the District of Columbia, and the United States court for any territory, of the district where the offense is committed or threatened or of which the offender is an inhabitant, or has his principal place of business, are hereby vested with jurisdiction of any suit brought by the Attorney General in the name of the United States, to prevent

and restrain violations of any of the provisions of this Act. Any person violating any of the provisions of Sections 3 or 5 shall be guilty of a misdemeanor and upon conviction thereof be fined not more than $1,000 for each offense.

* * * * *

MISCELLANEOUS.

Sec. 17. (a) As used in this Act—

* * * * *

(2) The term "United States" means the several States and Territories and the District of Columbia; the term "State" includes a Territory and the District of Columbia; and the term "Territory" means Alaska, Hawaii and Puerto Rico.

(3) The term "interstate or foreign commerce" means commerce between any State and any place outside thereof, or commerce within any Territory or the District of Columbia, or between points within the same State but through any place outside thereof.

* * * * *

(6) The term "distilled spirits" means * * * rum * * *."

* * * * *

NOTE: The labeling regulations issued by the Federal Alcohol Administration pursuant to this Act are contained in the Record, pp. 319-376.

APPENDIX C.

Puerto Rican Rum in the United States Market.

Obviously Puerto Rico has been a source of rum as long as the Island has been a sugar producing country. Three hundred years ago, Puerto Rico's sugar planters made rum,—a product for which the Island had become justly famous long before the American Occupation in 1898.

Rum making as an art did not die out in Puerto Rico during the life of the 18th Amendment. The Island had a large quantity of high grade molasses,--the raw material of rum fermentation and distillation. When the Prohibition amendment was finally repealed, Puerto Rico had lost much ground, but was well prepared to immediately take up where she had left off at the end of the World War. *Today Puerto Rico produces a large part of the rum consumed in the United States, and the brands manufactured by Puerto Rico's leading distilleries are offered for sale in every State of the Union where liquors are permitted to be sold.* (Italics supplied.)

THE NEW ERA

The present distilling business in Puerto Rico dates from 1934, when the abrogation of the Prohibition Amendment again permitted the Island to bottle and export its famous product.

In the first year of the new era, Puerto Rico exported only some few thousand cases of rum. Shipments had risen to 43,200 cases at the end of 1935. In 1940 Puerto Rico expects to export more than half a million cases of rum. The distilling industry in Puerto Rico paid about $200,000 in direct excise taxes in 1935. The Insular Government collected, in direct excise taxes on exported rum, more than $2,000,000 in 1939.

The Industry

The distillation of rum in Puerto Rico a few decades ago was a personal art. Distillers were small entrepreneurs, frequently sugar planters, and there was no uniformity in their product from week to week and from month to month. Some individual rum makers were justly famed for their product, but accident played a large part in the process. Individual blending formulae were closely guarded family secrets and rum makers slept by their vats and stills. Nevertheless, the product was by present standards, "spotty."

Today Puerto Rico's distilling industry is as modern as nylon. The Island's distilleries are, indeed, but fabricating extensions of laboratories. Processes in Puerto Rico's distilleries today are controlled down to fractions of one part in one hundred thousand. The product which has become famous all over the world in recent years under the general classification of "Puerto Rican Rum" is uniform in purity to a degree quite inconceivable a few years ago. Fermentation agents are controlled in hermetically sealed vats. The production of Puerto Rican rum is ,today, a matter of chemical, not rule of thumb, control. Distillers in the modern field must be organic chemists.

Still highly prized by Puerto Rico's individual distillers are blending formulae which give individual brands of Puerto Rican rum their distinctive characteristics,—but Puerto Rico's standards today are based on scientific accuracy, not guesswork.

Historical Statistics

The Chamber of Commerce of Puerto Rico, drawing on the export statistics derived from the manifest postings of Listin Diario, a C. of C. organ, has set down in this little pamphlet, on the pages which follow, a statistical summary of the first five years of Puerto Rico's rum shipments to the United States. Because there are several hundred registered rum brands in Puerto Rico today, the statistics group exports by distillers, not brands.

This month by month compilation of rum export figures, better than anything that could be written about Puerto Rican rum, testifies to the growing demand in the United States for a product which, a few years ago, was unknown because it did not exist.

The distillation of rum is one of the most important manufacturing industries in Puerto Rico today. In fiscal 1939-40, exports from the Island were worth $5,254,828, as against a figure of $40,593 in fiscal year 1934-35.

1935

NOTE: Puerto Rico shipped to the United States in the year 1935 approximately 43,200 cases of rum. Details of these shipments by distilleries are not available in accurate form.

On the following pages are the detailed statistics on shipments of rum from Puerto Rico, month by month, from January 1, 1936, forward.[10]

The Chamber of Commerce of Puerto Rico.

EXPORTS OF RUM BY FISCAL YEARS, DOLLAR VALUE.

(Bureau of Internal Revenue, Government of Puerto Rico).

1934-35	$ 40,593
1935-36	$1,040,409
1936-37	$2,028,231
1937-38	$3,106,279
1938-39	$3,194,849
1939-40	$5,254,828

[10] In printing these statistics on the following pages, figures for monthly shipments of cases of rum have been omitted and only yearly totals are given.

1936 (Standard Cases)

TOTAL	110,185
Brugal & Co., Inc.	2,650
González, E. R. & Co.	4,475
Julia, Licorería	386
La Bodega, Licorería	355
Marin, Licorería, Inc.	4,119
Nieves, J. R. & Co.	60
Ronrico Corporation	90,417
Serrallés, Destileria, Inc.	7,545
Miscellaneous	178

1937 (Standard Cases)

TOTAL	302,402
Bacardí Corporation of America	61,580
Brugal & Co., Inc.	8,946
Carioca, Destilería, Inc.	64,208
Fernandez, J. Sucrs. S. en C.	379
González, E. R. & Co.	722
Julia, Licorería	1,388
Marin, Licorería, Inc.	8,285
National Liquor Co., Inc.	9,570
Nieves, J. R. & Co.	20
Pascual, Mateo M.	1,829
Ronrico Corporation	94,496
Serralles, Destileria Inc.	48,839
Torruellas, I. & Co.	100
West Indies Rum Distilleries, Inc.	147
Miscellaneous	1,893

1938 (Standard Cases)

TOTAL	275,955
Bacardí Corporation of America	24,507
Barceló Marques & Co.	3,686
Brugal & Co., Inc.	11,058
Carioca, Destilería, Inc.	80,185
Fernandez, J. Sucrs. S. en C.	1,180
Julia, Licorería	2,909

Marin, Licorería, Inc.	7,942
National Liquor Co., Inc.	11,006
Nieves, J. R. & Co., S en C.	71
Pascual, Mateo M.	2,382
Ronrico Corporation	82,959
Serralles, Destileria, Inc.	46,709
Torruellas, I. & Co.	165
West Indies Rum Distilleries, Inc.	104
Miscellaneous	1,092

1939 (Standard Cases)

TOTAL	407,683
Antillano, Cia. de Ron	14,672
Bacardí Corporation of America	73,950
Barceló Marques & Co.	6,770
Brugal & Co., Inc.	15,247
Carioca, Destilería, Inc.	104,338
Fernandez, J. Sucrs. S. en C.	1,196
Grau, Primitivo	200
Julia, Licorería	3,986
La Bodega, Licorería, Inc.	35
La Gioconda, Inc.	50
Marin, Licorería, Inc.	12,544
National Liquor Co., Inc.	10,973
Nieves, J. R. & Co., S. en C.	655
Pascual, Mateo M.	5,029
Ronrico Corporation	87,063
Serralles, Destileria, Inc.	62,875
Torruellas, I. & Co.	391
Tropical, Destileria, Inc.	5,452
West Indies Rum Distilleries, Inc.	1,136
Miscellaneous	1,121

1940 (Six Months)

TOTAL	249,287
Antillano, Cia, de Ron	9,074
Bacardí Corporation of America	71,320
Barcelo, Marquez Co.	4,145
Brugal & Co., Inc.	9,086

Carioca, Destilería Ron de Inc.	60,755
Fernandez, J. Sucs. S. en C.	530
Grau, Primitivo	605
Julia, Licorería	1,880
La Bodega, Licorería	16
La Gioconda, Inc.	50
Marin, Licorería, Inc.	5,884
National Liquor Co., Inc.	9,337
Nieves, J. R. & Co., S. en C.	974
Pascual, Mateo M.	2,380
Ronrico Corporation	47,366
Serralles, Destilería, Inc.	19,340
Torruellas I. & Co.	241
Tropical, Destilería Inc.	3,973
West Indies Rum Distilleries, Inc.	2,091
Miscellaneous	240